

DOCUMENT RESUME

ED 395 356

EA 027 439

AUTHOR Beckham, Joseph C.
TITLE School Officials and the Courts: Update 1996.
INSTITUTION Educational Research Service, Arlington, Va.
PUB DATE 96
NOTE 90p.; For the 1994 update, see ED 380 866.
AVAILABLE FROM Educational Research Service, 2000 Clarendon Blvd.,
Arlington, VA 22201 (Stock No. 0208; \$28 plus \$3.50
postage and handling; ERS subscriber price: \$14).
PUB TYPE Collected Works - Serials (022) --
Legal/Legislative/Regulatory Materials (090) --
Information Analyses (070)

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS Administrator Responsibility; Boards of Education;
Compliance (Legal); Constitutional Law; *Court
Litigation; Educational Equity (Finance); Educational
Finance; Elementary Secondary Education; *Federal
Courts; *Legal Responsibility; Public Schools;
*School Law; School Personnel; Sex Discrimination;
Sexual Harassment; Special Education; State Church
Separation; *Student Rights; Teacher Dismissal

ABSTRACT

This monograph was designed primarily to provide a broad-scope treatment of case law involving public school issues. It summarizes judicial decisions that provide a general overview of school law issues for the practicing administrator, teacher, or school board member. The cases were selected from judicial decisions found in federal and regional reporters for the period from July 1, 1994, to June 30, 1995. The case summaries are grouped into the following categories: school boards and board members, administrators, finance, teachers and other district employees, pupils, special education, religion, and tort liability. Contains reference notes and a glossary. (LMI)

* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *

ED 395 356



School Officials and the Courts: Update 1996

Joseph C. Beckham



U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION
CENTER (ERIC)

This document has been reproduced as
received from the person or organization
originating it.

Minor changes have been made to
improve reproduction quality.

Points of view or opinions stated in this
document do not necessarily represent
official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL
IN OTHER THAN PAPER COPY HAS BEEN
GRANTED BY

D. Perkins-Cough

TO THE EDUCATIONAL RESOURCES
INFORMATION CENTER (ERIC)."

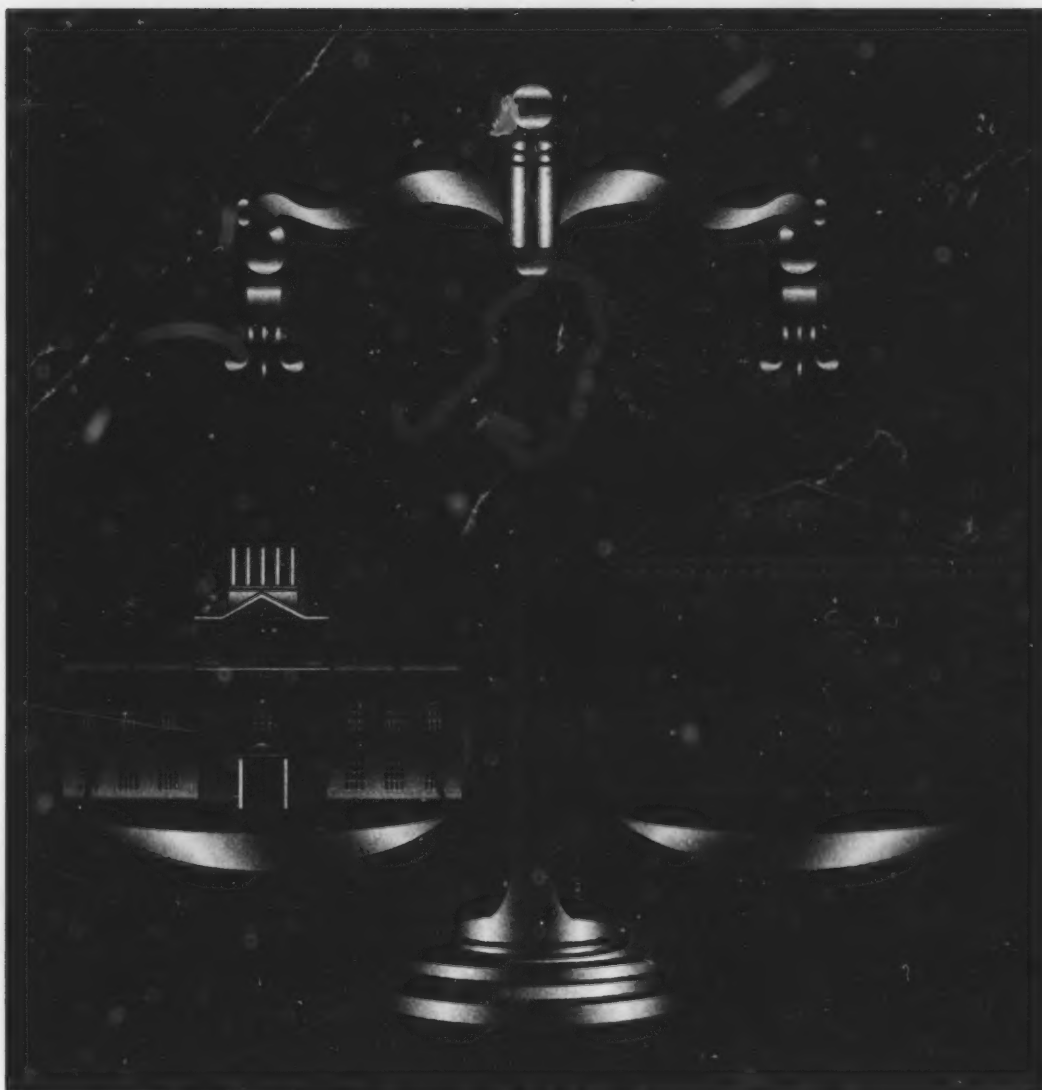
Educational Research Service

EA 027 439



School Officials and the Courts: Update 1996

Joseph C. Beckham





EDUCATIONAL RESEARCH SERVICE

2000 Clarendon Boulevard

Arlington, Virginia 22201

Phone: (703) 243-2100 • Fax: (703) 243-8316

The Information Source for School Decisions

Sponsored by:

American Association of School Administrators
American Association of School Personnel Administrators
Association of School Business Officials International
Council of Chief State School Officers
National Association of Elementary School Principals
National Association of Secondary School Principals
National School Public Relations Association

Educational Research Service is an independent, nonprofit organization serving the research and information needs of the nation's schools. ERS Comprehensive Subscriptions are available to local school districts, state and local associations of school administrators and school boards, state departments of education, and other related organizations. Subscription rates are graduated according to school district size or type of agency, and are available on request.

School districts and other organizations maintaining a Comprehensive Subscription to ERS pay one annual fee to receive a broad range of resources, including:

- access to the ERS On-Call Information Service for district administrators;
- a copy of each new ERS report on priority concerns in education (12-15 per year);
- the monthly *ERS Bulletin*, summarizing research produced by other agencies;
- the quarterly *ERS Spectrum*, the journal of school research and information;

- access to the ERS School Operations Information Bank, containing information about hundreds of successful programs in local school districts across the nation;
- the thrice-yearly *ERS School Operations Information Exchange*, summarizing a sampling of programs in the Information Bank;
- ERS School District Comparative Profiles.

In addition to the ERS Comprehensive Subscription, ERS reports are available for purchase separately, and school districts or individual educators can obtain individualized ERS subscriptions bringing them the ERS resources of greatest interest to them.

For more information about ERS services, write, call, or fax: Educational Research Service, Member Services, 2000 Clarendon Boulevard, Arlington, VA 22201. Phone: (703) 243-2100. Fax: (703) 243-5971.

ERS Senior Staff

John M. Forsyth
President

Nancy J. Protheroe
Director of Research

E. Jean Weber
Coordinator of Administration

Josephine L. Franklin
Coordinator of Information Services

Katherine A. Behrens
Coordinator of Membership and Marketing

Deborah Perkins-Gough
Coordinator of Publications

Melinda H. Brown
Coordinator of Salary and Compensation Studies

ERS and the author are solely responsible for this publication; no approval or endorsement by specific ERS sponsoring organizations is implied.

ORDERING INFORMATION: Order from Educational Research Service, 2000 Clarendon Boulevard, Arlington, Virginia 22201. Phone: (703) 243-2100. Fax: (703) 243-8316. ERS subscriber price: \$14.00. (Single copy routinely mailed as part of subscription.) Nonsubscriber price: \$28.00. All mail orders must be accompanied by check or purchase order. Phone orders accepted with Visa or MasterCard. Please add the larger of \$3.50 or 10% of purchase price for postage and handling. Stock #0208.

Contents

Foreword	viii
----------------	------

Introduction	1
--------------------	---

School Boards and Board Members

Goal of Making City Schools "More Attractive" Is Beyond Court's Authority	2
Achieving "Unitary Status" Results in End to Federal Court Oversight	3
Court Approves Strategies for Voluntary Desegregation	3
Publication of Special Education Costs Is Protected by Qualified Immunity	4
Local Board Has Authority to Approve Channel One Video with Opt-Out Plan for Students	4
Local School Councils Do Not Violate Constitution	5
Charter School Program, Combined with Closing of Neighborhood Schools, Is Constitutional	5
Local School Councils Have Sphere of Independence Separate from School Boards	6
Court Upholds Massachusetts Plan for Condom Availability and Counseling in Secondary Schools	6
Federal Court Orders Board to Restore Banned Book to School Library Shelves	7
Censure of Board Member for Distributing Provocative Film Clips to Students Is Upheld	7

Administrators

Board's Failure to Provide Annual Evaluation and Goals Statement Does Not Breach Superintendent's Contract	9
Finance Director Is Improperly Terminated by Superintendent	10
Florida Principal's Marriage to Former Student Does Not Justify Suspension of Certificate	10
"Preponderance of Evidence" Supports Principal's Termination for Alleged Harassment of a Teacher	11
High Performance Evaluations Support Former Principal's Sex Discrimination Claim	11
Committee's Recommendation of a Male Role Model Introduces Potential Gender Discrimination in Hiring Decision	12
Principal Fails to Establish Claim of Discrimination in Discipline for Theft of School Funds	12

Principal's Failure to Stop Student Sexual Harassment of a Teacher Could Result in Liability	13
State Tenure Commission's Decision Must Stand Absent Clear and Convincing Evidence of Error	13

Finance

Arizona's Funding Formula Violates Requirement for a "General and Uniform" System	15
Texas Funding System, Which Allows for Local District "Supplementation," Meets Test of "Efficiency"	16
Salary Equity Supplements Violate West Virginia's "Thorough and Efficient" System	16
Reduction in State Funds for Local Districts Meets Maine's Rational Basis Test	17
Rhode Island's Requirement to "Promote" Public Schools Does Not Create a Fundamental Constitutional Right to an Education	17
Wisconsin's School Choice Plan Properly Excludes Tuition Payments to Private Religious Schools	18
Ohio Cannot Impose Tuition Charges on Disabled Children Who Reside Within the State	18

Teachers and Other District Employees

Court Upholds Teacher's Right to Criticize Board Spending in Letter to the Editor	20
Teacher's Complaints Are Not Matters of Public Concern	21
Employee's Threatening Comments Are Insubordination Rather Than Free Speech	21
Constitution Protects Employee's Speech Accusing Supervisor of Defrauding the State	22
Evidence Justifies Nonrenewal Decision In Spite of Teacher's Exercise of Free Speech	23
Court Permits Teacher to Videotape Health Code Violations at High School	23
Teacher's Academic Freedom Does Not Include Right to Damage Textbooks	24
Reference to Previous Evaluation Is Sufficient to Justify Teacher's Nonrenewal	24
Evaluations May Include Subjective Judgments Based on Observations of Performance	25
Teacher Waives Opportunity for Pre-Suspension Hearing	25
School District Need Not Halt Dismissal Proceedings Pending the Outcome of Criminal Prosecution	26
Teacher's Failure to Accept New Teaching Assignment Justifies Decision to Dismiss for Insubordination	26
Teacher's Repeated Use of Abusive Humor with Students Justifies Dismissal	27
Teacher's Continuing Problem in Use of Unnecessary Force Justifies Dismissal	27
Striking of Disruptive Student Justifies Teacher's 10-Day Suspension	28
Teacher's Pattern of Sexually Harassing Conduct Results in Dismissal	28
Admission of a Crime Is Sufficient to Establish Moral Turpitude Justifying Dismissal	29
Teacher Receives Adequate Due Process in Lay-Off Decision	29
Substitute Teacher Fails to Establish Subterfuge in Decision to Remove Her from List of Available Substitutes	30
District's Nonrenewal Decision Is an Attempt to Retaliate Against Teacher	30

School Officials Avoid Liability for Sexual Harassment Through Immediate Intervention and Investigation of Complaint	31
---	----

Pupils

Federal Gun-Free School Zones Act Is Found Unconstitutional	33
Board's Denial of Access to Religious Group Violates Freedom of Association and Assembly	33
Board's Prohibition on Showing of R-Rated Films Is Upheld	34
Refusal to Accept Student's Research Paper on "Life of Christ" Is Justified	35
Refusal to Publish Student's Reviews of R-Rated Films Is Unjustified Violation of Free Speech	35
Court Strikes Down Prior Restraint Policy on Distribution of Student Religious Materials at School	36
School Restriction on Wearing Apparel Containing Vulgarisms Is Upheld	36
Supreme Court Upholds Random Urinalysis Policy for Student Athletes	37
Metal Detector Scans and Bag Searches Are Ruled Permissible	38
School Administrators Do Not Violate Privacy When They Question Students About Child Abuse or Drug Use	38
School Officials Are Permitted to Remove Child from School Based on Suspicion of Child Abuse	39
Search of Student's Purse Justified by "Totality of Circumstances"	40
Mere Hunch That Student Is in Possession of Drugs Does Not Justify Search	40
Telephone Tip and Background of Student Justify Search of Bookbag, Backpack	41
Strip Search to Underwear Is Upheld by Federal Court	42
Placing Student in Detention Facility's Holding Room Does Not Violate Liberty Interests or Privacy Rights	42
Teacher's Forcible Ejection of Student from Classroom Is Permissible Conduct	43
Restrictions on Students' Jewelry, Clothing Are Justified by Schools' Discipline Interests	44
District Is Not Liable for Death of Student Who Left Campus Without Permission	44
Release of Student to an Unauthorized Person Does Not Create Basis for Violation of Liberty Rights	45
District Is Not Liable for Injuries to Student Shot on School Grounds	45
Teacher's Failure to Report Sexual Abuse of Student by Another Faculty Member Could Result in Liability	46
Principal's Response Creates Qualified Immunity in Coach's Sexual Abuse of Students	46
District's Failure to Report Former Employee's Sexual Abuse of Student Could Result in Liability for Later Abusive Conduct	47
District's Failure to Prevent Peer Sexual Harassment Could Result in Liability	47
Single Act of Peer Harassment Does Not Establish a Claim Against School District	48
School Officials Are Not Liable for Assault by Students with Histories of Violent Behavior	48

Special Education

Modified Sign Language System Meets Requirements For Free, Appropriate Education	50
School District's Failure to Inform Does Not Create Significant Denial of Due Process	50
School Officials Have Qualified Immunity to Report Suspected Child Abuse Involving Retarded Child	51
District Is Liable for Failure to Inform Parents of Right to Request Extended-School-Year Program	51
Court Refuses to Presume That a Neighborhood School Is Part of a Least Restrictive Environment	52
Temporary Placement for Special Student Is Justified on the Basis of Parents' Initial Consent	53
Risk of Injury Justifies Court Orders Removing Students from Current Placements	53
Failure to Ensure Participation of Children's Teacher Invalidates Placement Decisions	54
Least Restrictive Environment Must First Meet Minimum Educational Requirements	55
Students Circumvent Disciplinary Expulsions by Asserting Right to Evaluation for Special Education Services	55
District's Policy on Short-Term Suspension Conforms to Special Education Law	56
Interscholastic Age Eligibility Limit Does Not Violate the Americans with Disabilities Act	57

Religion

Student-Led Morning Devotionals over School Intercom Violate Establishment Clause	58
Mississippi Statute Permitting Student Prayers at All Assemblies Is Ruled Unconstitutional	59
Student Religious Club Must Abide by District's Nondiscrimination Policy	59
District Can Reprimand Teacher for Teaching Religion in the Classroom	60
Portrait of Jesus Christ in High School Hallway Violates Establishment Clause	60
School Closures on Good Friday Violate Establishment Clause	60
District Is Not Required to Provide Cued Speech Device to Student in Private Religious School	61

Tort Liability

Principal's Failure to Disclose Allegations of Previous Assaults Does Not Establish Negligent Supervision	62
Principal Could Be Liable for Failing to Report Abuse Allegations If No Investigation Was Conducted	62
Negligent Hiring or Supervision of Abusive Employees Can Result in Liability	63
Duty of Proper Instruction and Adequate Supervision Applies to School Activities on School Grounds	63
School Officials Are Not Liable for Injury Absent Actual Knowledge That a Student Is Carrying a Gun	64
Brief, Spontaneous Altercation on School Bus Does Not Create Negligent Liability	64

Principal Is Entitled to Exercise Discretion in Evaluating Seriousness of Student's Alleged Injury	65
School Security Guard's Failure to Accompany Student to Parked Car Is a Contributing Factor in Shooting Incident	65
Teacher Supervising Class Outing on a Bike Path Is Not Liable for Injury to Third Party	66
Assumption of Risk Does Not Bar Claim for Coach's Negligent Supervision	66
School District Has a Duty to Warn Athletes That They Can Furnish Protective Equipment	67
School Officials Are Not Negligent in Determining Student's Class Rank	67
School Districts Normally Have No "Special Duty" to Protect Teachers from Assault on School Grounds	68
Parents May Be Liable to Teacher for Injuries Inflicted by Their Child	69
Qualified Privilege Protects School Officials in Statements About Teacher	69
Central Office Administrator Has Qualified Privilege to Communicate Information to Superintendent	70
District Is Not Liable for Breach of Termination Agreement with Former Employee	71
Principal and Parents Have Statutory Immunity for Reporting Suspected Child Abuse by a Teacher	71
Principal Wins \$250,000 Damage Suit Against Parents	72
Reference Notes	73
Glossary of Selected Legal Terms	79

Foreword

School Officials and the Courts: Update 1996 is the 17th in the series of ERS monographs designed to summarize judicial decisions on elementary and secondary education issues. The monographs in this series have been published biennially from 1975 through 1981, and annually since 1981, to help school administrators and others keep aware of court activities in the field of public education. Readers should note that with this edition, the title has been changed to reflect the date of publication (for this year, 1996), whereas previous editions' titles have reflected the time span of the cases reviewed (which for this year was the one-year period ending June 1995).

Today, case law concerning the schools covers a variety of areas—such as the constitutional rights of students and teachers, educational “adequacy,” and tort liabilities—that were not at issue to previous generations of school leaders. For this reason, school officials need to keep up to date on current court decisions and their implications for local school district management and policy.

The Educational Research Service asked Dr. Joseph C. Beckham to prepare the summaries and discussions in this monograph. In his discussion of court cases, Dr. Beckham presents technical legal information in a readable, comprehensible style; his comments are intended for the general background and information of laymen, and not as legal advice.

Dr. Beckham is eminently qualified to write *School Officials and the Courts: Update 1996*. He is a Professor in the Department of Educational Leadership at Florida State University's College of Education, and holds a J.D. in law and a Ph.D. in educational administration. For more than 15 years, he has served as a consultant and legal counselor on matters of law and education to school districts, institutions of higher education, state departments of education, and several national organizations. He is on the authors' committee for *West's Education Law Reporter*, and is past-President of the National Organization on Legal Problems of Education. His many publications include articles and law reviews in the *Journal of Education Finance* and the *Journal of Law and Education*, and the monograph *Legal Aspects of Teacher Evaluation*. Dr. Beckham has recently authored *Meeting Legal Challenges in the School Setting*, a new book in the “Leading for Learning” series published by Technomic Publishing.

ERS expresses appreciation to Dr. Beckham for his carefully prepared summaries of judicial decisions and his insightful comments on the meaning of the various cases in this publication. His summaries and analyses should be useful to school administrators, board members, students of education law, and others concerned with recent court decisions in the field of elementary and secondary education. We sincerely welcome user comments and suggestions about this ERS monograph.

John M. Forsyth
President
Educational Research Service

Introduction

The cases included in *School Officials and the Courts: Update 1996* were selected from judicial decisions found in federal and regional reporters in the period from July 1, 1994 to June 30, 1995. These cases provide a general overview of school law issues for the practicing administrator, teacher, or school board member. Chapter titles conform to previous editions of this annual monograph.

No annual compilation and summary of selected school law cases can be the definitive authority on legal issues that confront today's educator. Judicial opinions vary among jurisdictions and are subject to revision in the course of time or changed circumstances. State and federal court decisions are often limited in terms of generalizability, depending on the application of a particular state's legal standards or the scope of a court's jurisdiction.

Previous editions of *School Officials and the Courts* may be consulted to provide greater depth and scope of coverage as well as insight into long-term trends in case law. Future editions will provide a subsequent history of the cases reported and summarized in this work, indicating instances in which a case has been reversed or otherwise modified on appeal.

This monograph is designed primarily to provide a broad-scope treatment of case law involving public school issues. Cases were selected on the basis of their relevance to contemporary problems in public school settings, their definitiveness as articulations of existing law, and their reliability as consistent guides to educational policy making and practice. The summaries emphasize brevity and concise treatment of legal issues in an effort to inform without presenting undue complexity or procedural irrelevancies. The author's narrative and background commentary are limited to brief introductory materials in favor of an emphasis on the case summaries.

The reader is encouraged to extrapolate legal principles that can guide conduct, but is cautioned to recognize that unique variables such as altered circumstances or jurisdictional differences may modify the application of case law. In reviewing the summaries, it is particularly important to consider the legal rationales that guide the judge's resolution of an issue. In the context of public education, school officials must understand these rationales in order to apply the cases in making decisions or formulating policies based on fundamental fairness and reasonable principles of law.

School Boards and Board Members

As state agencies, school boards have the authority to exercise considerable discretion on behalf of public schools. However, the discretionary authority of the board is tempered by the implied standards that boards must act reasonably and that board policy must be rationally related to a valid or legitimate state purpose. Discretionary authority must be exercised in good faith for a proper motive.

School boards derive authority from state constitutional provisions and legislative enactments. In most instances, courts grant considerable discretion to the local board in carrying out its mission to provide for public education, often granting powers that are implied rather than specifically granted in state laws. However, other constitutional and statutory provisions may expressly constrain the power of school boards. In the past year, courts have considered desegregation plans involving school districts, the authority of school boards to remove books or propose curricula, and the implications of charter schools, local school councils, and statewide decentralization of public education.

Goal of Making City Schools "More Attractive" Is Beyond Court's Authority

The United States Supreme Court addressed an 18-year-old school desegregation case in this past term. The state of Missouri objected to federal district court decrees requiring the state to fund salary increases for instructional and noninstructional staff within the Kansas City

school district, and to continue funding for remedial education programs to compensate for low levels of student achievement within the district. The court had ordered the state to fund these efforts for the purpose of making the district's public education program more attractive and ending "white flight" from the city school system. The federal appeals court that reviewed the district court orders characterized both decrees as steps necessary to eliminate the vestiges of a state-imposed segregative system.

The United States Supreme Court, however, in a decision written by Chief Justice Rehnquist, ruled that the federal district court's orders were beyond the federal court's authority. The salary increases proposed were intended to make the district more attractive to students in outlying suburban districts, improving the desegregative attractiveness of the city school district. However, this policy amounted to an inter-district goal that was beyond the scope of the intradistrict violation identified in the original litigation involving the Kansas City schools. In the Court's view, the district court should limit its orders to eliminating, to the extent possible, the vestiges of segregation within the district.

Similarly, the order to compel the state to fund quality education programs could not be sustained. The Court emphasized that the fact that the city schools' student achievement is below national norms at many grade levels was not a relevant test of whether the previously segregated district had achieved unitary status. The district court's goal of making the city school district

"more attractive" and creating a magnet district of the city school district was not consistent with its limited authority to eliminate, as far as reasonably practicable, the prior segregative system.¹

Achieving "Unitary Status" Results in End to Federal Court Oversight

A federal district court ruled that a South Carolina school district had eliminated, to the extent practicable, the vestiges of a former segregative system, had achieved unitary status, and was no longer compelled to respond to federal court oversight. The initial segregation case, brought in 1962, had resulted in "school choice" plans that had a limited effect in reducing segregation. Later court orders compelled forced busing as a means of eliminating a segregated system.

In a final phase, the court approved a comprehensive school district plan to build new schools, convert some existing facilities, develop magnet schools and programs, redraw attendance zones, and restructure pupil and teacher assignments. This plan required a bond issue for implementation, and voters within the district rejected the proposal by better than 2-to-1.

A revised plan that did not rely on a bond election was submitted and approved in 1988. This plan revised attendance zones, created magnet school programs at predominately black inner-city schools, and established majority-to-minority transfer options to desegregate predominately white schools. It was uncontested that the school district fully implemented these plans.

In the opinion of the district court, the school district had achieved unitary status in student assignments such that judicial control over the district was no longer required. While some of the district's schools had not achieved the desired racial balance sought in the 1988

plan, the remaining imbalances resulted from the high percentage of minority students and the segregative effects of residential choice patterns. The court concluded that the district had substantially complied with the desegregation decree and had demonstrated good faith in complying with the court's orders. Judicial supervision of the school system was ordered to end.²

Court Approves Strategies for Voluntary Desegregation

A Pennsylvania school district responded to proceedings initiated by the State Human Relations Commission by developing a voluntary plan to remedy racial disparities in educational opportunity and academic achievement and to enhance voluntary desegregation. After hearings on a plan developed by a court-appointed panel that was to recommend ways to remedy the perceived racial disparities, a state court ordered the local school district to take several steps in order to comply with the proposed recommendations.

In its final order to the school district, the court emphasized programs for parental involvement and educational improvement and strategies for desegregation, approaches that had been recommended by the special panel. Parental involvement incorporated outreach strategies, while educational improvement included: professional development; curriculum development; and collaboration with local colleges and universities, business and industry, and community-based organizations to implement school-to-work and school-to-higher-education programs. Desegregation strategies were designed to emphasize the reevaluation of existing magnet school programs and other academic enrichment programs to increase black and Hispanic student participation.³

Publication of Special Education Costs Is Protected by Qualified Immunity

A South Dakota school board was sued for releasing information concerning a special education student who received special education services in an out-of-state residential facility. The cost of the placement compelled the local board to raise property taxes, and state law mandated that a notice justifying the increase in taxes be published in the local newspaper. Although the name of the child was not provided, the costs of travel expenses for the parents, whose names were identified, led a newspaper reporter to discover further details and name the child in a published report. The parents sued the school board, contending that the disclosure violated their rights under the Family Educational Rights and Privacy Act and claiming that a cause of action for monetary damages could be brought under Section 1983 of the Civil Rights Act of 1964.

The federal district court noted that once the information was published, the parents were subjected to harassing phone calls and public attacks in an attempt to force them out of the school district. A cause of action based on federal privacy law and Section 1983 was recognized by the court as a basis for a suit for damages.

However, the court found that the board in this case was not liable because the board was making a good-faith effort to comply with state law. Information about the cost of services that necessitated a tax increase was contained in board minutes that were required by law to be published within 20 days of the board meeting. Since the board sought only to release information on authorized expenditures in the board meeting and did not identify the child in the meeting minutes, the attempt to accommodate state statutory

requirements provided the board with qualified immunity from a suit for damages.⁴

Local Board Has Authority to Approve Channel One Video with Opt-Out Plan for Students

A California school board that approved the use of Channel One in its local public schools was sued by parents and the state Department of Education. Channel One is a commercially developed, 12-minute news program geared to middle and high school students, which incorporates 10 minutes of current events coverage with two minutes of advertising. The programs are made available to school districts free of charge provided that the commercials are presented as part of the programs. The state argued that the local board's decision to integrate Channel One into the school curriculum exceeded the local district's authority and violated provisions of the California Constitution. The school district based its rationale on the educational value of the programming and on its desire to instill the habit of news viewing in students.

The state appeals court ruled in favor of the local school district, finding that, under principles of local control, local California school districts are granted substantial discretionary control of public education. With regard to Channel One, the school district had latitude to approve a program that was not solely educational as long as the noneducational use was no more than incidental to a valid educational purpose.

The court emphasized that students could not be compelled to view the Channel One programs if they objected to the commercial advertising that was part of Channel One, and a suitable provision to allow students to opt out of the program must be provided. The court's reasoning

was that since the advertising was a "seamless" facet of the programming, students should be given several options, ranging from simply not paying attention to the programs to leaving the classroom to attend school meetings or study halls.⁵

Local School Councils Do Not Violate Constitution

In 1988, the Illinois General Assembly enacted the Chicago School Reform Act in an effort to improve the quality of the ailing Chicago public school system. The portion of the act providing for local school council elections was found to violate constitutional principles, and the legislative enactment was struck down by the state supreme court. The legislature then amended the act, and a new suit was brought to have the new legislation declared unconstitutional. The two portions of the law that were challenged related to the provision for election of local school councils, and to the section abolishing tenure for Chicago school principals. The federal district court found both provisions to be constitutional and upheld the state law.

In order to decentralize the city schools, the legislature had provided for election of local school councils with authority over the local school. The court ruled that the election of six parent representatives and two community representatives to the local school council did not violate equal protection, despite the disparity of seats held by parent and community representatives, because the legitimate interest in giving persons most directly interested in the education of children a greater role in decision making at the school site outweighed any burden on the voting rights of others.

The legislature had also provided that school principals do not have continuing contract rights under the provisions of state law. On this question, the court ruled that principals did not have a vested right to continued employment under state law, and could not claim a due process right based on the tenure they had earned as teachers.⁶

Charter School Program, Combined with Closing of Neighborhood Schools, Is Constitutional

A Colorado school district's decision to close district elementary schools and open a new charter school was challenged by Hispanic parents, who contended that the state charter school law and its application by the local district violated equal protection under the Fourteenth Amendment.

The decision to close two elementary schools and establish a charter school was based on the recommendations of a study group developed as part of an alliance between a local university and the school district. The alliance proposed a special school to address the problems of low test scores, graduation rates, and achievement for Hispanic and minority students. The school would feature a focused curriculum, high expectations, and an insistence that all students complete the same curriculum. The parents contended that the proposed plan was motivated by a desire to discriminate and that neighborhood schools should not be closed.

The federal district court found Colorado's charter school act to be constitutional, holding that there was no evidence that the law had a discriminatory intent or purpose. The court concluded that the state was motivated by a legitimate governmental interest in encouraging innovation

rather than by discriminatory intentions. The court also ruled that the district's decision did not violate the parents' right to equal protection absent a showing of any intent on the part of the local school board to discriminate against Hispanic students in its decision to close elementary schools. The district was regarded as having been motivated by financial concerns in developing its charter school program.⁷

Local School Councils Have Sphere of Independence Separate from School Boards

Kentucky's Educational Reform Act was interpreted by the state supreme court in a case in which a local school council challenged the authority of the local school board.

Kentucky's legislature had established local school councils as part of a sweeping reform of public education, which was intended to decentralize decision-making authority and involve all participants in the school system, affording them an opportunity to contribute actively to the educational process. The new law delegated to local school boards the authority to control and manage the public schools of the district, which included authority over school funds, property, and compensation of school employees. The law also created school councils with the responsibility to set school policy. A local school council challenged the authority of the local board to require board approval of school goals and objectives, implementation plans to achieve the goals and objectives, and methods of evaluating the effectiveness of the implementation plans.

The state supreme court noted that the language of the state statute did not grant express power to the local board to set school policy at local schools. Since the court concluded that the

local board would have districtwide powers, it reasoned that the legislature intended that the local school councils would have authority over decision making for individual schools. Although parts of the legislation included language that suggested councils must set policy consistent with district board policy, the court did not read this provision as creating a right of approval in the local board. Taking the view that each entity was delegated its own independent sphere of responsibility, the court held that the state law did not delegate to local boards the power to require board approval of school council actions.⁸

Court Upholds Massachusetts Plan for Condom Availability and Counseling in Secondary Schools

Parents and students in a Massachusetts school district challenged a program of condom availability established by the school board in the junior and senior high schools of the district. The parents argued that the plan implemented by the board violated their rights to familial privacy and liberty under the Fourteenth Amendment.

The plan permitted students at the junior high school to request free condoms from the school nurse. As a condition of receiving the condoms, students were required to receive counseling on sexually transmitted diseases. At the high schools, counseling was also available, but students could obtain condoms from vending machines for 75 cents. The school district claimed that the program was in all respects a voluntary program and did not intrude into the privacy rights or liberty interests of students and parents.

The state court agreed with the school district's position, and rejected the parents' challenge to condom availability. The court empha-

sized that the daily operation of schools should be left to the judgment of school officials. The parents contended that the distribution policy invaded a constitutionally protected "zone of privacy" that surrounds the family; the court agreed that such a protected right exists, but found that the parents failed to demonstrate that their interests were burdened by a condom availability program. Since the threshold question in determining whether a state's action is constitutional is whether there has been any violation of a protected right, the court concluded that the parents did not meet this initial burden. Had there been evidence that the state's action had a coercive or compulsory effect on students or parents, then the issue of a constitutional violation might have arisen.⁹

Federal Court Orders Board to Restore Banned Book to School Library Shelves

A Louisiana parent complained about a school library book titled *Voodoo and Hoodoo*, written by Jim Haskins. The book's focus was on the history of African tribal religions and the folklore of contemporary religious practices. Following the school district's procedure for the review of library books, a school-level committee unanimously recommended retaining the book in the reserve reference stacks at a district middle school. After this finding of educational suitability, an appeals committee appointed by the superintendent affirmed the decision. The matter was then addressed by the school board, which heard testimony and received a petition from representatives of the local Christian Coalition demanding the book's removal. The board voted affirmatively on the motion to remove the book from library shelves. One member of the board voiced support for the motion by indicating that

she saw no value in a book that supported witchcraft, and that she chose to "agree with the word of God."

The federal district court concluded that the local board's decision to remove the book could not be considered a valid, content-neutral regulation of speech based on a concern for the health and safety of students. Reasonable regulations over student free speech must be content-neutral, narrowly drawn, and consistent with a substantial public interest. In this case, the court was convinced that the reason the book was removed was that board members sought to deny students access to ideas with which the board members disagreed because of their moral and religious beliefs. Since removing the book implicated the students' First Amendment right to have access to ideas, the district must demonstrate that the book had caused or could be reasonably anticipated to cause a disruption in the school environment. Because the board failed to establish such a proof, the court ordered the book restored to library shelves.¹⁰

Censure of Board Member for Distributing Provocative Film Clips to Students Is Upheld

A New York board member and retired filmmaker volunteered to lecture to three high school classes on the persistence-of-vision phenomenon. The lecture included six 35mm film clips, which were intended to illustrate the phenomenon. One of the these clips portrayed two women and one man naked from the waist up. After viewing the first class presentation, the high school principal asked the board member not to use the clip in the remaining two lectures, and the board member agreed not to use the clip. The board member later conceded that the clip

may have been inappropriate for the presentation and that some students might have thought it provocative. He wrote a letter of apology to the class that had viewed the clip.

Despite this letter, the superintendent and the remaining members of the board adopted a resolution criticizing the board member's poor judgment, censuring him, and banning him from schools during school hours for the year. The board member appealed this decision to the state school superintendent, and the state superintendent upheld the ban as within the authority of the local board.

In response to a challenge to the board's authority based on an allegation that the board had violated the board member's right to free speech under the First Amendment, a federal district court granted summary judgment to the board and a federal appeals court affirmed the judgment. The appeals court reasoned that the board member had no free speech right to show photographs of seminude women to a high school class. Noting that it is well settled that educators may limit the content of school-sponsored speech as long as the limitations are

reasonably related to legitimate pedagogical concerns, the court found that the school board is ultimately empowered to determine what is inappropriate for the classroom.

Although the board member was a guest lecturer and not a teacher, the court found that school officials may exercise authority over expressive activities of students, parents, and members of the public when these activities might reasonably be perceived to bear the imprimatur of the school. That the speech appeared to be school-sponsored was apparent in that it took place in a school classroom as part of a lecture. While the board member argued that the film clips accompanying the lecture were more properly characterized as library resources to which students should have a right of access, the court found that library resources may be accessed on a voluntary basis, whereas class presentations are more appropriately a part of the curriculum that is required material for students. The authority of school officials to enforce limits on curriculum materials is greater than it would be if these were simply library materials accessible to students on a voluntary basis.¹¹

Administrators

Public school administrators are distinguished from other school employees by their unique contractual relationship with the district board and their leadership responsibilities. Provisions for selecting, hiring, evaluating, and disciplining or dismissing administrators often differ from those for other professional employees. For example, school administrators typically do not have tenure unless they are specifically given that entitlement under statute or board rule. Constitutional protections associated with free speech, free association, and due process of law apply to administrators, as do provisions barring discrimination, but the entitlements and authority of administrators are often highly specific to the laws and regulatory standards of the particular state.

Board's Failure to Provide Annual Evaluation and Goals Statement Does Not Breach Superintendent's Contract

A former Rhode Island school superintendent contended that the local board had breached her contract of employment. The superintendent's contract of employment called for annual evaluations of her performance by the board, followed by a meeting to discuss the superintendent's performance as a basis for determining whether to renew her contract. The contract stipulated several criteria to be used in the evaluation of the administrator, and required that the end product of evaluation would include specific

instances of strengths and of unsatisfactory performance.

However, a series of events created upheaval on the school board, and no evaluation was ever completed. Neither did the board provide the superintendent with a statement of its goals for the year of her employment. When board elections and charges of improper accounting practices by school employees further complicated these matters, the superintendent submitted her resignation and left the district for a position in another state. A year later, the former superintendent brought suit against the board in a federal court.

A federal appeals court reviewed the findings of the lower federal district court and held that the board's failure to provide the superintendent with an annual evaluation of performance, as provided in the contract, was not a material breach of the contract. Although the superintendent repeatedly asserted to board members that the evaluation was a requirement of the contract, the court emphasized that the varied and complex responsibilities of the superintendent would make a single unified evaluation difficult to develop and the lack of such an evaluation did not hinder the superintendent in carrying out her responsibilities. Neither did the court consider the board's failure to provide a list of annual goals a material breach of the contract of employment, because the superintendent had adequate opportunity to interact with the members of the board in order to determine their ideas about the school system's objectives.¹

Finance Director Is Improperly Terminated by Superintendent

A Mississippi school finance director sued the local school district for wrongful discharge. The finance director had been employed under a contract that granted him a six-month probationary period. Within two weeks, the superintendent placed the director on suspension without pay for insubordination. The director requested a hearing before the board, but the board acted to reinstate him without a hearing. The superintendent then undertook to terminate his employment, and prohibited him from returning to work. At one point, the superintendent had the finance director arrested for disturbing the peace based on the director's repeated attempts to return to the finance office. The director then sought a hearing before the board, but no hearing was granted. A trial court ordered the board to grant the finance director an administrative hearing, and the hearing officer found that the director was a probationary employee who could be terminated "at will." The director appealed this determination.

The Supreme Court of Mississippi ruled that the finance director had been improperly terminated and was entitled to full back pay. The court emphasized that under state law, while the superintendent may specify the duties of an employee, only the board has the authority to terminate employment. In reviewing the board's minutes, it was clear that the board had set aside the superintendent's decision to dismiss the finance director. Further, the superintendent's efforts to hinder the employee from returning to work and performing his duties supported the court's view that the employment contract had been breached, since state law did not authorize the superintendent to fire noninstructional personnel.²

Florida Principal's Marriage to Former Student Does Not Justify Suspension of Certificate

A Florida assistant principal challenged the suspension of his teaching certificate by the state's professional practices commission. The administrator had counseled a 15-year-old female student at the high school where he was employed. The student was going through the difficulties of a divorce in her family, and the administrator counseled her as part of his assigned duties. Thereafter, the two were seen together both on and off campus, and teachers and students suspected that they were maintaining an inappropriate relationship. When confronted by the principal, the assistant principal assured the principal that there had been no improper conduct; he and the student were not seen together again while he remained at the school. At the end of the term, the assistant principal was transferred to another school in the district. Midway through that year, he and the former student were married with the consent of the then-16-year-old student's father.

The state appeals court reversed a decision of the professional practices commission and the state commissioner of education, and concluded that there was no clear and convincing evidence that the administrator and student had established an inappropriate personal relationship. The court also concluded that the publicity surrounding their marriage could not be used to establish that the administrator's effectiveness had been impaired. The court found that there was no evidence the two had engaged in sexual activities or otherwise acted in a romantic or inappropriate way toward each other prior to their marriage. Furthermore, standing alone, the marriage was not unlawful, and there was no testimony that the

employee's ability to perform effectively was adversely affected by the notoriety surrounding the marriage. In the absence of clear and convincing evidence to support suspension of the administrator's certificate, the court reversed the determination of the commission.³

"Preponderance of Evidence" Supports Principal's Termination for Alleged Harassment of a Teacher

A Mississippi middle school principal was terminated for allegedly assaulting and threatening an elementary school teacher. The principal challenged the termination as a violation of due process, and contended that there was insufficient evidence on which to base the decision to dismiss him.

Conflicting evidence was presented at the hearing on the dismissal charges. The female teacher recounted two incidents in which the principal had followed her in his car and threatened her. The principal denied these charges and contended that the teacher had misunderstood him when she alleged that he had threatened to kill her. Although testimony conflicted, other witnesses tended to corroborate elements of the teacher's story. A colleague testified that she spoke with the teacher after the threat on her life, and was convinced that she was fearful. An investigation by the superintendent led to charges against the principal, and the board voted to dismiss him after hearings and testimony.

The Supreme Court of Mississippi ruled that the board could, at its discretion, choose to believe the testimony of the teacher rather than that of the principal. Dismissal could be justified under state law if the board found by a preponderance of the evidence that the testimony of the teacher was more credible. The teacher's testi-

mony was buttressed by the testimony of others who, although they did not see the alleged misconduct firsthand, had witnessed the behavior of the teacher and confirmed their impressions that she felt threatened. Even after this evidence was produced, the principal continued to deny the allegations but was not able to prove affirmatively and conclusively that he did not commit the acts.⁴

High Performance Evaluations Support Former Principal's Sex Discrimination Claim

A former New Mexico school principal alleged that she was discharged by a local board because of her gender. The former principal had been a teacher in the district for 14 years when she was appointed principal of a district middle school. She was the first female principal appointed in the district, and served in the position for approximately six years. When a reduction in funds forced the elimination of an assistant superintendent position, the female principal was advised that she would be reassigned to an elementary school teaching position, and that the assistant superintendent would replace her as principal. She initially accepted the reassignment, but then resigned and left the district.

Within a year, she requested an investigation by the Equal Employment Opportunity Commission, which issued her a right-to-sue letter after making no findings in the case. A federal appeals court ruled that the teacher had established a prima facie case on her claim of sex discrimination and that material issues of fact must be resolved at trial on the question of whether the district's reasons for dismissing her were a pretext for discrimination.

The central issue in the case focused on the district's claim that the former principal had been unsuccessful in resolving faculty problems at the middle school during her six years of employment. Although this rationale was regarded by the court as a legitimate, nondiscriminatory reason for the adverse employment decision, the former principal was able to raise a suspicion that this reason was a pretext by alleging that the problem had been ongoing throughout the tenure of her predecessor, who had been elevated to the position of associate superintendent and then superintendent. The former principal further claimed that she had received the highest possible marks on evaluations of performance throughout her tenure as principal, including her performance in establishing and maintaining cooperation with staff and an atmosphere conducive to learning. Given the contradictory record on this point, the appeals court reversed a summary judgment for the school district and remanded the case to the lower court for further findings of fact.⁵

Committee's Recommendation of a Male Role Model Introduces Potential Gender Discrimination in Hiring Decision

A former New York assistant principal, who had been released in a reduction in force, was not hired for a new position as an assistant principal, and alleged that the reason she was rejected as a candidate was based on impermissible sex discrimination. The former assistant principal, a white female, challenged the board's decision to hire a black male for the position. She claimed that the district discriminated against her under Title VII of the Civil Rights Act of 1964, alleging that she was qualified for the position, had served as an assistant principal previously,

and was rejected on the basis that the committee recommending the black candidate reported he possessed the broad cultural background that was needed at the middle school and would be an excellent male role model for students.

The federal district court found that the middle school interviewing committee's reliance on its belief that a black male would be an excellent male role model raised a material fact issue as to whether the school board's decision to hire him, rather than a white female, was based on impermissible, discriminatory reasons. The court ruled against a school board motion for summary judgment, finding that a trial was needed in order to determine the relevant facts that led to the hiring decision.⁶

Principal Fails to Establish Claim of Discrimination in Discipline for Theft of School Funds

An Ohio elementary school principal claimed that he had been discriminated against on the basis of his race in a decision by the local board to suspend him without pay. The principal admitted that he had stolen student activity funds. He argued that his punishment was not consistent with the punishment of teachers or other district administrators for similar offenses, and the disparate treatment he received was predicated on the fact that he was African American.

On review by a federal district court, the principal was able to establish a prima facie case that the district violated Title VII in suspending him; however, the district ultimately prevailed by articulating a legitimate nondiscriminatory reason for the suspension. To make out a prima facie case, the principal was required to show that similarly situated employees who engaged in conduct that was comparably serious to his were

treated differently. The court rejected the principal's claim that his conduct and the resulting discipline should be compared to that of teachers, since principals hold a position of formal leadership in the school system. However, the court agreed that the principal could reasonably be compared to a school system treasurer or another principal. In these latter two cases, the employees, who were white, were allowed to stay on the job or accept a transfer and reassignment after being accused of misconduct.

The court noted that making a prima facie case does not automatically establish that racial discrimination took place. In this case, the court concluded that the district articulated a legitimate nondiscriminatory reason for the suspension, based upon the principal's confession that he had stolen the money. However, if the principal could produce evidence that the other administrators were not disciplined as harshly after they either admitted guilt or had been convicted of the alleged offenses, then he could establish a basis for racially motivated discrimination.⁷

Principal's Failure to Stop Student Sexual Harassment of a Teacher Could Result in Liability

A former female band director in an Illinois high school alleged hostile environment sexual harassment that ultimately led her to lose her position. She claimed that she told the principal of the school on several occasions of instances in which a student had posted crude notes of a sexual nature concerning her. She also alleged that she had observed instances of male teachers directing offensive sexual remarks toward other female teachers and female students in the school district. The teacher contended in her complaint that school officials undertook no action to inter-

vene and prevent the sexually hostile environment created by students and teachers, and that the failure to intervene could be construed as an official custom or policy of the district and as an intentional act of the supervising principal. The school district and the individual administrators moved to dismiss the former band director's complaint.

Responding to the motion to dismiss, a federal district court ruled that the teacher's complaint stated a cause of action under Title VII of the Civil Rights Act, and that the principal could be liable for his failure to act to prevent a hostile sexual environment if the allegations of the complaint proved to be factual. The teacher's complaint was sufficient to withstand the motion to dismiss in that it alleged facts that, if proved true, would create liability for the board based on a widespread practice of ignoring sexual harassment in the school. Further, the complaint alleged that the principal was informed of instances of sexual harassment by students, and intentionally took no action against students to stop the harassment. If these facts were established in a trial on the merits of the complaint, the principal could be held liable for violating the teacher's constitutional rights to equal protection of the laws under the Fourteenth Amendment.⁸

State Tenure Commission's Decision Must Stand Absent Clear and Convincing Evidence of Error

An Alabama school principal was charged with misrepresenting the cost of a basketball backboard to the school's parent teachers organization (PTO), accepting payment from the PTO for one half that cost, and presenting the PTO with an invoice that he had purchased the backboard. A maintenance supervisor testified that he

had replaced the backboard and advised the principal that there would be no charge for the replacement, and that the administrator had warned him not to say anything to the PTO members about the arrangement. On hearing the testimony, the local school board dismissed the principal for cause. On appeal to the state tenure commission, the commission reversed the school board's decision on the grounds that there was insufficient evidence that the principal intended to defraud the PTO. A state appeals court found that the overwhelming weight of the evidence established that the principal was guilty of the charges.

However, the Supreme Court of Alabama reversed the appeals court, and held that the state

tenure commission's interpretation of events must be given great weight unless clearly contrary to the overwhelming weight of the evidence. The commission apparently concluded that the principal did not act with the requisite intent to defraud the PTO when he advised the membership of the cost of a new backboard and submitted a document referred to as an invoice from a company that supplied backboards. The court emphasized that the commission's decision must be allowed to stand unless there was clear and convincing evidence that the decision was erroneous.⁹

Finance

The state's commitment to provide public education is found in state constitutional provisions and statutory enactments. Revenue collection and allocation systems are subject to review under provisions of state and federal constitutional standards, particularly those involving uniformity, equity, and adequacy of public education. In the past year, a number of state school finance programs were challenged on the theory that the statutory plan violated the state's constitutional mandate for public education. Since the wording of each state's constitution differs, care must be taken in generalizing any of the conclusions from these cases.

Arizona's Funding Formula Violates Requirement for a "General and Uniform" System

Arizona's school finance system depends on local property taxation, and a state system for equalizing financing of public schools in each district. Under the state funding formula, the cost of public education is allocated as follows: 45 percent state share, 45 percent local district share, and 10 percent United States share. The system has an arguably significant effect on capital needs, since districts may allocate that portion of their annual budget set aside for capital improvements to fund maintenance and operations. Thus, a district that repeatedly uses its capital funds for other purposes will see its facilities deteriorate unless it passes bond issues that generate revenue.

An action was brought by school districts and parents challenging the statutory system. The plaintiffs demonstrated that property-rich districts with low assessed-property evaluations generated more revenue to support public schools than did property-poor districts with high assessment rates. Even where rates were comparable, differences in demographic factors such as per capita income and number of pupils in the district would cause disparities in funding per pupil.

The state supreme court ruled that the school financing system violated the constitutional mandate for a general and uniform system. The court found that the quality of education varied between districts as a result of the state's funding system. While the state constitution does not mandate perfect equality, it does require that disparities in funding between districts not be caused by the state's system of funding public education. The court found that the school funding system developed under a legislative statutory scheme was itself the cause of the disparities in school funding. Heavy reliance on local property taxation, arbitrary school district boundaries, and only partial attempts at equalization cause the disparities which were held to violate the constitutional mandate for public education. The court returned the case to the trial court to retain jurisdiction in order to assess what action the legislature should take to correct the unconstitutional statutory scheme.¹

**Texas Funding System, Which Allows for
Local District "Supplementation,"
Meets Test of "Efficiency"**

Local school districts in Texas sued the state, contending that the legislature had failed to provide for an efficient system of public education through its funding plan. Under the Texas funding system, the state provides 43 percent of educational costs and the local district provides the remaining 57 percent through local taxation. The system also allows local districts to undertake supplementation of their educational efforts by permitting the local district to exceed the state's *ad valorem* cap if voters approve such a measure. The state constitution requires that the state's financing of public education be part of an "efficient" system.

The Supreme Court of Texas ruled that the term "efficiency," as used in the state constitution, does not require that the legislature provide for equity at all levels of its statutory funding system. Based on this principle, school districts do not have to have substantially equal revenue for substantially equal tax effort at all levels of funding, and local supplementation is not prohibited even if it is unequal among districts.

The court held that the Texas school funding system met the test of financial "efficiency" as required by the constitution, and disparities in per pupil expenditure between districts were not so great as to justify a conclusion that the system was unconstitutional. Furthermore, special laws that enable local districts to exceed the *ad valorem* cap imposed in state school finance legislation were not unconstitutional, since this option permitted local school districts to supplement their programs with local funds. The court emphasized that it might have reached another conclusion on this question had it been shown that the sup-

plementation provisions resulted in amounts of supplementation so great that it could destroy the efficiency of the school funding system.²

**Salary Equity Supplements
Violate West Virginia's
"Thorough and Efficient" System**

West Virginia statute provides that teachers and school service personnel in local districts are entitled to receive a state salary supplement in order to achieve salary equity in all school districts within the state. However, the provision for state supplements is conditioned by whether or not the local district had an excess levy in effect at the time of the supplement. Districts in which voters rejected excess levies are denied state equity funds as a result of this statute.

Counties and employees who had been denied state equity funds challenged the law, contending that the state unconstitutionally allocated state funding based on a county's ability to maintain an excess levy and that the effect of the law was to maintain an unequal and discriminatory compensation system.

The state's highest court ruled that the state statute was unconstitutional. The court found that the statute violated the provisions of the West Virginia Constitution, which requires the legislature to provide for a "thorough and efficient" system. Because education is a fundamental right under the state constitution, any discriminatory classification found in the state's financing system cannot stand unless the state can demonstrate some compelling interest to justify the unequal classification. By fixing a county's entitlement to state equity funding based upon whether an excess levy was in effect on a particular date, the state created a discriminatory classification that violated the constitution.³

Reduction in State Funds for Local Districts Meets Maine's Rational Basis Test

In fiscal years 1991 through 1994, the Maine legislature reduced the total state expenditure for public schools. Under the formula for allocating funds to local districts, this had a disparate effect on districts, and the reduction was challenged by some of them.

The Maine formula essentially provides for a foundation level of spending per pupil that is based on the average of the actual local operating costs of all school units in the state, separated into elementary and secondary students. The total allocation for a particular school unit, the foundation level multiplied by the number of pupils, is apportioned between the state subsidy and the local share. The effect of a reduction in the state subsidy is that school districts with a proportionately higher state subsidy would lose proportionately more funding from a percentage reduction in the state subsidy.

The state supreme court found that the appropriate test for determining whether the reduction in the state subsidy violated the state constitution was the rational basis test rather than the compelling interest test. If a state statute violated a fundamental constitutional right, then the compelling interest test would be invoked by the court, but if the law did not violate a fundamental right, the state need only show that its treatment of similarly situated persons in a different way bears a rational relationship to a valid state purpose. There was no evidence that the reductions in state subsidies denied students a fundamental right to an education; therefore, the appropriate test was that of a rational basis. Since funding reductions were due to declining state revenues, the court reasoned that the state's legi-

timize goal was to subsidize local efforts to provide education while doing so within available state resources.⁴

Rhode Island's Requirement to "Promote" Public Schools Does Not Create a Fundamental Constitutional Right to an Education

Three Rhode Island communities challenged the state's allocation of funding for the support of public schools, contending that property-poor school districts were not as well funded as were property-rich districts. The suit presented to the state's high court the first challenge to the state's financing system and the court's first opportunity to review the state constitution's charge to the legislature that the assembly "promote the public schools and secure to the people of this state the advantages and opportunities of education."

The high court provided an extensive examination of the history of public education in Rhode Island, including a suggestion that the first public school established in the New World was at Newport in 1640. In interpreting the provision of the state constitution, however, the court concluded that the framers of the provision had not intended to create a system that required equitable school funding. When this provision was reconsidered in the constitutional revisions of 1986, it remained unchanged, even though several recommendations for modification were proposed. Thus, no fundamental right to education can be construed from an interpretation of the constitution. Absent such a right, the legislature's statutory scheme for funding public education must be viewed from the standpoint of whether a legitimate state purpose was realized through the provisions for school finance. The

court found that the funding formula was rationally related to the legitimate state purpose of balancing competing needs and encouraging local participation in education.⁵

Wisconsin's School Choice Plan Properly Excludes Tuition Payments to Private Religious Schools

Wisconsin's school choice plan was challenged by parents who sought reimbursement for placing their children in religiously affiliated private schools. The state's plan permitted parents who enrolled their children in private, non-religious schools to receive a state subsidy in the form of a tuition payment made directly to the qualifying private school. The plan was designed to exclude religiously affiliated schools because of a concern that direct payments of tuition to such schools would violate the separation of church and state provisions of the First Amendment.

Five low-income parents who met the state's criteria for participation in the school choice plan sought to receive the state subsidy for enrolling their children in private religious schools. When the schools were declared ineligible, the parents sued, alleging that their rights to free exercise of religion and equal protection of the law were violated. The essence of the parents' claim was that although the state had no legal obligation to provide funding for private schools that educate children from low-income families, once the state did provide funding it could not exclude private religious schools.

Emphasizing that the United States Supreme Court has found direct governmental payments flowing to religious schools and payments to parents with children attending religious schools to violate the U.S. Constitution, the

federal district court held that the state's policy denying tuition payments to religious schools was consistent with interpretations of the establishment clause. Although the parents asserted a violation of their free exercise and equal protection rights, the state's interest in avoiding a violation of the establishment clause outweighed the parents' interest. Any attempt to expand the program to provide tuition payments for children attending private religious schools would violate current interpretations of the establishment clause and render the state's choice program unconstitutional.⁶

Ohio Cannot Impose Tuition Charges on Disabled Children Who Reside Within the State

Two children living in a private residential facility providing long-term care to the developmentally disabled sued an Ohio school district, which sought to require tuition for the education services provided by the district. The children lived in the facility within the state of Ohio, but were subject to the legal custody of their parents, who had lived out of state since their children were born. The children had lived at the home for ten years, and their parents have stated that they have no present intention to change their placement.

The school district provided a special placement, consistent with identified disabilities, and sought reimbursement in the amount of \$90,000. Ohio law permits local school districts to charge tuition when children are not in the legal or permanent custody of an Ohio resident or a governmental agency in the state and the parents are not known to have been residents of the state subsequent to the child's birth. However, the parents contended that the Ohio residency

requirement violated provisions of the Individuals with Disabilities Education Act (IDEA).

A federal district court found that the IDEA requires states that receive federal funding to provide free education to disabled children who reside in the state. The court emphasized that the residency of the children must be determined independently of the residency of the parents. Since the children live in Ohio, and their parents

had expressed a bona fide intention that they remain there, they were residents of Ohio. The Ohio statute therefore conflicted with the requirement of the IDEA that the state provide free appropriate public education to children who reside in a state that receives federal funding for that purpose. The court issued summary judgment for the children, and enjoined the local district from charging tuition.⁷

Teachers and Other District Employees

As public employees, teachers and other school employees enjoy constitutional and statutory protection relative to their jobs. Rights to free speech and association, due process of law, and equal protection of the law have traditionally received the greatest judicial scrutiny in cases involving adverse employment decisions affecting these employees. Statutory provisions that influence employment practices in public schools include federal anti-discrimination provisions and state statutes ensuring due process, creating tenure or continuing contract, requiring good cause for dismissal, and establishing standards and procedures for evaluation, selection, and corrective discipline.

Court Upholds Teacher's Right to Criticize Board Spending in Letter to the Editor

A special education teacher in South Carolina sued the local school district, alleging that her rights to free speech had been violated by the district's decision to dismiss her. When terminated, the teacher had been employed in the district for over 22 years and had consistently received excellent teacher evaluations. The teacher had written a series of letters to the local newspaper expressing outrage that the local board had funded the travel of several of its members to attend a conference and demanding names and information on the board members who attended the conference. As a result, the superintendent of the district directed the teacher's local school principal to closely monitor the teacher and report

on any hints of misconduct. Relations between the teacher and the principal became strained, and several teachers reported that the unpleasant relationship soured professional relationships at the school site. Teachers at the school site circulated a petition urging that the teacher be transferred.

The school superintendent proposed a plan to catch the teacher in an act of insubordination. He refused her request for a three-day leave to travel to the nation's capital to receive an award from an environmental organization, hoping that the teacher would leave school without approval and that this misconduct could be documented by employing a photographer to take a picture of the teacher receiving the award. Although this scheme failed, the board ultimately dismissed the teacher for alleged disruptive behavior.

The federal district court applied a three-part test in ruling that the district had violated the teacher's rights to freedom of speech. First, the court determined that the teacher's speech was on a matter of public concern, and thus was protected by the First Amendment. The fact that the teacher had written letters to the editor established that the context of her speech included a matter of relevance to the public at large and appropriate for publication in the forum of a newspaper.

Second, the court determined that the teacher would not have been terminated except for her exercise of constitutionally protected speech. Memoranda from the superintendent to the board made it clear that the teacher came to the attention of the superintendent through her letters to the editor. In one instance, the superin-

tendent had written to the board about "putting a lid on our current gadfly." In another instance, he had written that "maybe enough rope will allow our gadfly to suspend herself in an awkward position." Although the district contended that the reasons for termination were related to the teacher's disruptive behavior and absences from school, the court found that an intent to retaliate against the teacher was the primary and motivating factor for the adverse employment decision.

Finally, the court balanced the employee's free speech rights against the interests of the school district in providing public education and concluded that the teacher's right to express her opinion as to expenditures of school funds publicly, without fear of retaliatory dismissal, was paramount.¹

Teacher's Complaints Are Not Matters of Public Concern

An Indiana teacher sued the local board, alleging that the board refused to renew her contract because of her exercise of First Amendment free speech. The teacher had taught in the school district for 28 years when the board voted not to renew her contract in 1988-89. From 1984 on, the teacher's evaluations had reflected problems in maintaining classroom control of her students. A series of evaluations by the school principal and others designated to observe the teacher and help her improve her performance documented the teacher's failure to correct this deficiency. At the same time, the teacher regularly protested that she was assigned to large math classes and that conditions at the high school were disruptive. She grieved unsatisfactory evaluations, contending that she should not be responsible for the rude and disrespectful behavior of her students. Several performance improvement plans were

developed to assist the teacher to improve her control of students, but repeated evaluations by numerous observers confirmed that there was little or no improvement in performance. As a result, the board approved a recommendation not to renew the teacher's contract.

A federal appeals court affirmed a lower court decision finding for the school district on the teacher's free speech claim. While the teacher argued that she raised issues of public concern over class size and student discipline at the high school, the court found that she only raised these issues as a matter of personal interest. Her speech was intended only to benefit her in her private dispute with her employer.

In considering the content, form, and context of her speech, the court was convinced that the underlying motive for that speech was personal. The court noted that the teacher's complaints came only in response to criticism of her classroom performance. Furthermore, the teacher was not trying to call public attention to these issues, because she limited her complaints to private conversations with her employers and to the internal grievance procedure. The fact that her complaints touched on issues of interest to the public did not transform a purely personal matter into a public concern. The documentation clearly established that the district did not seek to retaliate against the teacher for her criticism; rather, the district terminated the teacher because she could not control her classroom.²

Employee's Threatening Comments Are Insubordination Rather Than Free Speech

A Texas school employee, one of several maintenance employees who provided evidence leading to the dismissal of a supervisor for

corruption and theft, was dismissed for insubordination by the school district after an incident involving another supervisor. The employee objected to being photographed by the supervisor, and told the supervisor that if he did not stop taking pictures of him the employee would "shove the camera up [the supervisor's] rear." The employee readily admitted that he had made the statement, but asserted that the adverse employment decision was motivated by a desire to punish him for his participation in disclosing the improprieties of his former supervisor.

The federal district court ruled that the employee failed to show that the exercise of free speech was a substantial or motivating factor in the district's decision to dismiss him. In free speech cases, the employee has the burden to show that the speech was constitutionally protected and that the exercise of that free speech was a substantial or motivating factor in the decision to dismiss. In this case, the court found no evidence that the district based its decision on the employee's disclosure of the previous supervisor's misconduct. It was undisputed that the employee had verbally threatened his current supervisor, and that threat revealed an intention to do physical violence to him. Documentation justifying the dismissal did not reveal any awareness that the employee had contributed testimony that led to a previous supervisor's termination, and the threatening conduct of the employee was sufficient to establish insubordination as a basis for discharge.³

Constitution Protects Employee's Speech Accusing Supervisor of Defrauding the State

An Illinois school district payroll specialist with outstanding job evaluations discovered that

her supervisor's earnings were being overstated to the state retirement system. Although she called this overstatement to the attention of her supervisor, he directed her to continue the practice and she acquiesced in this demand. However, a month later she refused to sign off on official reports that continued to report an overstatement of the supervisor's salary. Her supervisor signed the report himself and stated to the specialist that he had "serious concerns whether you can be a team player."

When the specialist was denied a bonus three days later, she brought the improper reporting to the attention of the district superintendent. He refused to discuss it with her, advising her that he would discuss the issue with supervisors in the business office. From that time forward, the specialist was subject to job reviews that resulted in her dismissal.

A federal district court found that the specialist adequately alleged that her speech was causally connected to her termination. However, the question before the court was whether her speech was on a matter of public concern and therefore constitutionally protected. The court noted that any attempt to defraud the state retirement system constitutes a misuse of public funds and is cause for general public concern. Considering the content, form, and context of the speech, the court found that the speech was made as a matter of public concern. The employee's motivation for making the statements appeared to have been based on her general public concern regarding the misuse of public monies. Her initial statement to her supervisor was in no sense self-serving, since she had little to gain by confronting her supervisor about the improprieties in reporting his income.

Although it was true that the employee informed the superintendent only after the revoca-

tion of her bonus, the court emphasized that the conversation took place only three days after she informed her supervisor that she would not sign off on documents that misrepresented his compensation. The court inferred that this meeting with the superintendent was simply a continuation of her attempts to address a public concern.⁴

Evidence Justifies Nonrenewal Decision Despite Teacher's Exercise of Free Speech

A Maine special education teacher claimed that her contract was not renewed by the school district because she had criticized the special education department and alleged that the middle school at which she was employed had violated federal special education laws. The teacher's criticism had come at a local board meeting.

A federal district court found that the teacher had met her burden to show that her speech criticizing the district's special education program was related to a matter of public concern in a public forum and that the decision not to renew her contract was predicated in part on her exercise of free speech.

However, in cases of this type, the district is presented with an opportunity to establish that it could have made the decision not to renew the teacher's contract absent consideration of the teacher's constitutionally protected activity. The school district presented additional evidence that tended to show that the teacher and her special education supervisor at the local school site had continuing problems in working cooperatively. Although her performance evaluations in her first year of teaching had been generally good, in her second year the teacher had documented problems in working with a larger class of special education students and in working with other

teachers at the school. The teacher had been diagnosed with a manic-depressive disorder in this time period as well.

Considering all the evidence, the court found that the district met its burden to justify the decision not to renew based on evidence that the teacher's working relationship with her supervisor and other teachers in the school had deteriorated, as had her effectiveness in working with students. Finding that there were significant reasons that led to the decision not to recommend reemployment, wholly apart from her presentation at the school board meeting, the court held that the adverse employment decision could be justified.⁵

Court Permits Teacher to Videotape Health Code Violations at High School

A Rhode Island high school art teacher was ordered to discontinue her practice of documenting what she believed were health code violations at her school. After repeated attempts to get school officials to rectify the health and safety problems, the teacher began videotaping code violations. The school district ordered her to discontinue this practice and not to release the videotape to anyone without permission of the school board. In response, the teacher sought a temporary restraining order from a federal district court to enjoin the district from denying her access to school property for the purpose of videotaping health code violations.

The federal district court granted the restraining order on behalf of the teacher. The order provided that the teacher could not be denied access to school property in order to videotape instances of health code violations, nor could she be prevented from distributing the videotapes. The court based its order on the

rationale that there was a significant likelihood the teacher's free speech rights were violated by the district's demand that she discontinue the videotaping.⁶

Teacher's Academic Freedom Does Not Include Right to Damage Textbooks

An Indiana teacher was suspended for two days without pay after it was discovered he had permanently removed the glossaries from school science textbooks. The teacher alleged an infringement of his right to academic freedom and due process of law in the decision to suspend him. He contended that his motivation for removing the glossaries in 146 science textbooks issued to his students was to promote the students' learning experience by forcing them to learn the meaning of words from the context without relying on definitions listed in the glossary.

The state appeals court found that the teacher's actions amounted to symbolic expression that can be distinguished from pure speech. However, the court found that the academic freedom claim bordered on the frivolous since his actions constituted criminal mischief under state law. Although the teacher asserted that the basis for removing the glossaries was a legitimate pedagogical approach, the court emphasized that his teaching method was not a verbal expression that contributed to a "marketplace of ideas"; rather, the teacher expressed his pedagogy by an act which is deemed criminal by the State of Indiana. The teacher's liberty interest in academic freedom did not constitute a license to destroy school property.⁷

Reference to Previous Evaluation Is Sufficient to Justify Teacher's Nonrenewal

An annual-contract teacher in an Ohio school district was not recommended for contract renewal after two evaluations of his performance in the classroom indicated deficiencies. The first evaluation took place after a fall observation by the assistant principal, and indicated specific recommendations for improvement that included: construction of more detailed lesson plans; daily emphasis on improving student writing techniques; and assignment of some classwork as homework to ensure better coverage of content in class. This evaluation also contained recommendations for obtaining assistance to improve the teacher's performance, which included: 1) reviewing the college writing and mastery curriculum, 2) reviewing available course outlines, and 3) discussing further steps for improvement with the department chair. When a second observation and evaluation did not find improvement in the areas indicated, the teacher was not recommended for renewal. Contesting this decision, the teacher appealed to a state appeals court on the grounds that the school district had not complied with requirements of state law.

State statute in Ohio requires that every evaluation must be accompanied by a written report that includes "specific recommendations regarding any improvements needed in performance ... and the means by which the teacher may obtain assistance in making such improvements." The teacher contested the second evaluation because it did not specify the recommendations and means of improvement. However, the court found that the second evaluation did meet these requirements by referring to the terms of the first evaluation. The second written evalua-

tion stated that "in the performance checklist I [the assistant principal] gave you in December, I indicated several concerns. I also made several suggestions ... I do not feel that you have made enough improvement for me to recommend that your contract be renewed." The court found that this language expressly incorporated by reference the findings, recommendations, and means of improvement from the first evaluation and emphasized that the previous concerns remained at issue. The evaluator was considered to have complied with the statute law on evaluation by incorporating an express reference to the first evaluation in the second evaluation.⁸

Evaluations May Include Subjective Judgments Based on Observations of Performance

A South Dakota school board adopted a policy on evaluation of the professional staff that required the school principal to conduct two formal observations and evaluate each teacher under continuing contract at least once during the school year. A continuing-contract teacher objected to a school principal's evaluation of her performance, contending that it was an abuse of the principal's discretion to include subjective comments and opinions on the teacher's performance in her personnel file. After grieving the evaluation without success, the teacher filed suit in state court to have the evaluation expunged.

The state appeals court ruled that the district's policy on evaluation recognized that a principal's evaluation of a member of the professional staff must be regarded as having some subjective elements. In this case, the court found that the principal's subjective assessment of the teacher's performance in the classroom was not arbitrary and capricious, since the principal

appeared to have the requisite credentials to make such an assessment and the evaluation was based on the required number of observations of the teacher's classroom. While a teacher might be unhappy with an unfavorable evaluation of performance, there were sufficient safeguards in the board's policy to avoid an arbitrary or capricious evaluation. The teacher had an opportunity to grieve the evaluation and to include a rebuttal statement in the personnel file.⁹

Teacher Waives Opportunity for Pre-Suspension Hearing

A Louisiana teacher with 15 years of experience working with special education students filed suit for reinstatement after dismissal. Eight separate charges were listed as a basis for the recommendation to terminate the teacher's employment. Among the charges were assertions that the teacher failed to organize the classroom for effective instruction, failed to plan lessons adequately, failed to provide appropriate pacing to meet student needs, and failed to maintain current and accurate records as required. In a letter providing notice of the charges, each charge was accompanied by documentation in the form of memoranda, evaluations, and lists of witnesses who would be called if a formal hearing were requested.

The attorney representing the teacher notified the district that the teacher would waive an informal hearing and elect a formal hearing on the dismissal. The board attorney informed the teacher and her counsel that, based on a telephone conference between the attorneys, "your client desires to waive all pre-termination conferences" and proceed directly to a formal hearing. Pending the formal hearing, the teacher was suspended without pay.

A state appeals court was asked to determine whether the teacher was improperly suspended without pay and whether she received adequate notice of the charges against her. The court noted that state law required that the teacher be provided with "notice and a pre-suspension opportunity to respond." In this instance, the court ruled that the teacher had received an opportunity, but had elected to forego the informal pre-suspension process and to proceed with the formal hearing. Neither the teacher nor her counsel objected that they had been misunderstood and that they did not intend to waive the opportunity to state her case prior to suspension. As to the adequacy of notice, the court found that the statement of charges, together with the accompanying documentation, was more than adequate to inform the teacher and her attorney of the charges and the evidence that would be relied upon in the formal hearing on her dismissal.¹⁰

School District Need Not Halt Dismissal Proceedings Pending the Outcome of Criminal Prosecution

A Connecticut school psychologist sued the local board of education to enjoin the board from conducting termination hearings until after resolution of criminal proceedings against her. The psychologist was arrested for allegedly defrauding car insurance companies by submitting false repair bills. With felony charges pending, the local board undertook an investigation to determine whether the employee had fraudulently obtained health insurance for her boyfriend by claiming that he was her husband. The result of the investigation was a recommendation that the board dismiss the employee for moral misconduct. The employee requested a formal hearing, but insisted on a stay until the criminal pro-

ceedings concerning the car insurance fraud were resolved. When the board declined to provide a stay, the employee filed for an injunction to halt the dismissal hearings.

The federal appeals court denied the school psychologist's request for a stay of the dismissal hearings. Although the employee asserted that the board hearings would provide state prosecutors a preview of her defense in the criminal case, thus depriving her of her Fifth Amendment right against self-incrimination, the appeals court found that the lower federal district court had properly issued a protective order that would prohibit state prosecutors from accessing that record. Although a federal court may sometimes justify a stay of a civil proceeding covering the same ground as a criminal prosecution, the protective order should be sufficient to protect the rights of the accused and permit the school district to go forward with the dismissal hearing.¹¹

Teacher's Failure to Accept New Teaching Assignment Justifies Decision to Dismiss for Insubordination

A Missouri tenured teacher, discharged for insubordination, challenged the dismissal on the grounds that the findings of the board were not supported by substantial evidence. The teacher had been assigned to teach at the kindergarten level, but was advised she would be reassigned to the third grade due to observations and evaluations that indicated she was having trouble with classroom management. The teacher was directed by the principal to remove her materials from the kindergarten classroom and report to a third-grade classroom on the first day of the orientation period just prior to the start of the new school year. Upset with the reassignment, the teacher failed to remove her materials from the classroom

over the next two days and did not report for the new assignment. She failed to return to the school on the third day, but did request leave of absence forms by telephone from the school secretary.

When the school principal learned that the teacher had failed to report to school and had requested leave of absence materials, the district personnel officer was contacted. A meeting was held the next school day, and the personnel officer and principal specifically asked whether the teacher intended to accept the assignment. The teacher did not address whether she would accept the assignment, but instead talked in general of alleged mistreatment. At the conclusion of this meeting, the personnel officer instructed the teacher to remain at home until contacted by a representative of the school board.

In reviewing the dismissal, the state court considered the record of incidents that led to the decision to dismiss and found that the evidence supported the charge of insubordination. The teacher failed to accept the new assignment, as evidenced by her refusal to remove her materials from the classroom, her absence from the school, and her refusal to respond to direct inquiries about her intentions. As a consequence, she was subject to discharge for insubordination.¹²

Teacher's Repeated Use of Abusive Humor with Students Justifies Dismissal

An Iowa ninth-grade teacher and coach with a history of inappropriate comments to students was dismissed. The record revealed that the teacher's use of sarcastic humor with students had been a repeated problem for the school. In the most recent incident, a student assigned to complete a movie review had concluded his critique by stating that he would prefer to be taken to

the parking lot and beaten to death rather than have to watch the movie again. The teacher gave the student a favorable grade, but wrote on the paper "I'd be glad to take you out to the street and beat you to death. The way your face looks, I think someone already has."

The reviewing court concluded that a record of such instances justified dismissal. Several years previously, the teacher had described the members of his girls' basketball team as "prima donna little bitches" and offended his track team by observing that "they couldn't win the Special Olympics." In another case, he told a student who wrote a paper on teenage suicide "for extra credit, why don't you try it." Under state law, "just cause" for termination must relate to job performance and effectiveness as a role model for students. The court found that the pattern of teacher behavior, which went uncorrected despite the teacher's repeated assurances that it would not continue, provided ample evidence to justify a dismissal decision.¹³

Teacher's Continuing Problem in Use of Unnecessary Force Justifies Dismissal

A Maine sixth-grade teacher was dismissed following two incidents in which he used physical force on students. In the first incident, the teacher kicked the back of a student's chair, forcing her into a table and resulting in red, painful marks under her ribs. In a second incident, the teacher became irate with a student, swore at him, and grabbed him by the neck. On learning of the two incidents, the superintendent placed the teacher on administrative leave and brought dismissal charges against him. Both incidents occurred in the spring term, but a review of the teacher's record established that there had been previous instances of inappropriate use of force

with students, and that the teacher had received a previous reprimand and admonition that any future use of force would result in dismissal.

On review of the decision to dismiss, a state court concluded that there was substantial evidence to justify dismissal. Findings that supported a determination that the teacher was unfit to teach included evidence that the teacher had humiliated students and used physical force when it was not necessary. The fact that the teacher had been advised to control his temper, and that his actions in using unnecessary force with students violated school policies, supported the decision to dismiss. In particular, the court noted that the board's dismissal decision included consideration of the extent to which the teacher's conduct would have an adverse impact on students and other teachers, and the fact that the teacher's conduct reflected a continuing problem.¹⁴

Striking of Disruptive Student Justifies Teacher's 10-Day Suspension

A West Virginia teacher/coach with a spotless record for effective control of students and no previous instances of inappropriate use of force with students was given a 10-day suspension following an altercation with a high school student. The teacher had been supervising students in the cafeteria at the time of the incident. Noticing that a student had pushed ahead in the cafeteria line, the teacher intervened and directed the student to go to the end of the line. The student refused and shouted obscenities at the teacher, who then took the student's arm and led him to the principal's office. En route to the office, the student repeatedly directed foul language to the teacher and stopped abruptly in an attempt to get the teacher to walk into him. At the office, the student twice pushed the teacher. When this hap-

pened a third time, the teacher slapped the student in the face with the back of his hand. The principal, who observed the striking of the student, ordered the teacher out of the office and prompted an investigation of the incident, which led to the 10-day suspension.

The state court found that the suspension was justified, notwithstanding evidence that the student had a long history of disruptive conduct and that the teacher/coach had an unblemished record of past performance. Although the teacher claimed to have reacted in self-defense, the record of eye witnesses and the teacher's testimony established that the teacher was not threatened at the time he struck the student and had struck the student to keep him quiet and get his attention. While sympathetic to the teacher, the court emphasized that "teachers ... are sometimes forced to resemble correctional officers as their emotions must not dictate their actions. Certainly school personnel do not have to tolerate behavior such as [the student's]. However, the appropriate answer is suspension, not slapping or otherwise striking."¹⁵

Teacher's Pattern of Sexually Harassing Conduct Results in Dismissal

A California middle school teacher was dismissed for immoral conduct based on a series of incidents with middle school students in his music classes. Female students testified that the teacher had offered them raffle tickets in exchange for sitting on his lap at a Christmas party, that the teacher had rubbed a female student's thigh in a sexual manner, and that the teacher had hugged a female student until the student became uncomfortable and had to push the teacher away. It was also alleged that the teacher made students uncomfortable with comments about their appear-

ance, indicating to one student that she was so cute that when she went to high school she would have to take mace.

The state appeals court applied several criteria to assess whether "immoral conduct" could be substantiated as a grounds for dismissal in this case: 1) likelihood that the conduct would adversely affect students or teachers; 2) degree of adversity anticipated; 3) proximity or remoteness in time of the conduct; 4) extenuating or aggravating circumstances surrounding the conduct; and 5) likelihood of a recurrence of the conduct. The court found that the conduct was physical sexual harassment of students and that there was no justifiable motivation for the conduct. It also concluded that the conduct was of a repetitive and continuing nature, which would further implicate an adverse impact. While reasonable minds might differ as to whether the teacher's conduct was sufficiently egregious to warrant dismissal versus progressive discipline, there was sufficient evidence to justify dismissal, particularly when the evidence was viewed in its entirety.¹⁶

Admission of a Crime Is Sufficient to Establish Moral Turpitude Justifying Dismissal

A tenured teacher in an Alaska school district was fired from his position on the basis of evidence that he had engaged in a sexual relationship with a 15-year-old student while employed as a teacher in another school district. The teacher had been employed 12 years earlier in an Idaho school district when he entered into the sexual relationship with the 15-year-old student. Shortly thereafter, the student became pregnant with the teacher's child and, with the consent of the parties, the child was put up for adoption.

The teacher agreed to resign from teaching in the Idaho school district, and sought employment in Alaska. As part of his application, he asserted that he had not been asked to resign for any reason from a teaching position and that he had not been convicted of any offense involving moral turpitude. When contacted, Idaho school district officials did not disclose the teacher's resignation or the circumstances surrounding it.

In 1992, after learning that the teacher was now employed with the Alaska school district, the former student contacted the district and detailed the circumstances of the sexual relationship. This information led the district to undertake termination, and the teacher appealed.

The state court affirmed dismissal for immorality, which, under state law, is defined as the commission of an act that constitutes a crime involving moral turpitude. The court emphasized that a criminal conviction is not necessary to support dismissal under immorality. The admission by the teacher that he was involved in a sexual relationship with a minor constituted sufficient evidence to satisfy the elements of the crime of sexual abuse of a minor under Alaska law. The court rejected the view that the school district could not consider conduct occurring prior to the teacher's hiring, since such a construction would immunize from dismissal a teacher who had engaged in illegal and immoral conduct prior to hiring, but who had successfully concealed such conduct.¹⁷

Teacher Receives Adequate Due Process in Lay-Off Decision

A Missouri school district was subject to a state department of education review. The recommendations of the review team required the implementation of a school improvement program

and involved restructuring and reduction in force. To implement the improvement plan, the district eliminated some administrative positions, reduced the number of physical education classes, and consolidated several physical education positions. A physical education teacher challenged his placement on involuntary leave as a violation of due process.

The federal appeals courts found that the district had not denied the teacher due process of law. The court emphasized that the decision to undertake the reduction in force was predicated on the program review and the need to reorganize, compelled in part by financial conditions in the district. All these were bona fide statutory reasons for undertaking a reduction in force. The teacher contended that he was denied a reasonable opportunity to be heard on his allegation that his selection was a pretext for an impermissible termination for cause, but there was no evidence presented that the board was motivated by pretext in its selection of the teacher. As to the contention that the teacher never received a hearing, the court noted that the teacher was notified of the leave and given an opportunity to appear at the next board meeting. The board included the teacher on its agenda for a formal meeting, but the teacher failed to attend. In the court's view, due process secures only an opportunity to be heard, which the board had provided.¹⁸

Substitute Teacher Fails to Establish Subterfuge in Decision to Remove Her from List of Available Substitutes

A black Missouri substitute teacher was accused by a black student of having called the student a disparaging racial name. The student's regular teacher reported the student's accusation to an assistant principal, who then reported this

information to the school district superintendent. The superintendent, acting without an investigation into the student's accusation, had the substitute teacher's name removed from the district's list of substitute teachers. The substitute teacher denied the student's accusation and charged that the superintendent had her name removed from the substitute teacher list because of her race.

A federal appeals court considered the substitute teacher's claim of racial discrimination, but found for the school district. The court agreed that the substitute had presented evidence of a prima facie case of discrimination under Title VII of the Civil Rights Act. She denied the student's accusation and presented evidence that she had performed satisfactorily as a substitute teacher. Since she was a member of a protected class and was adversely affected by the superintendent's decision, she established a claim of disparate treatment. However, the district met its burden to articulate a legitimate, nondiscriminatory reason for removing her name from the list of eligible substitute teachers.

The teacher argued that the superintendent lacked sufficient evidence for removing her name from the list, and she insisted she was not guilty of the student's accusation. However, the court was not concerned with the correctness or the wisdom of the superintendent's reason, only with whether the reason given was the real reason for the decision and not a pretext for discrimination. Finding no evidence that the reason given was not genuine, the court ruled in favor of the school district.¹⁹

District's Nonrenewal Decision Is an Attempt to Retaliate Against Teacher

A former Missouri teacher brought a race discrimination suit against the school district,

alleging that the district's failure to renew his contract was based on his race and contending that his contract was not renewed in retaliation for his complaints about the district's racial insensitivity to black students and staff.

The teacher had been outspoken in his criticism of a new high school principal, whom he had confronted in staff meetings and accused of racial insensitivity. Two months after the initial confrontation at a staff meeting, the principal directed the teacher to submit long-term and short-term lesson plans within two days. The teacher refused to submit the lesson plans and charged that the principal was harassing him because of his criticisms of the principal. Although the teacher had received satisfactory evaluations in each of his previous three years, he was notified by the district that his contract would not be renewed. The school district's nonrenewal of the contract was allegedly based on failure to plan and insubordination.

The federal district court found for the teacher on the grounds that the district's decision not to renew his contract was motivated by an attempt to retaliate against him for expressing his belief that the principal engaged in a discriminatory practice. The teacher established all the elements of a claim of retaliatory discrimination. First, he established that his complaints of racial insensitivity at the school were protected under Title VII. Second, an adverse employment decision occurred. Third, he established that a causal connection existed between participation in the protected activity and the nonrenewal decision.

The Title VII prohibition against retaliatory discrimination protects activities ranging from filing a complaint to expressing a belief that the employer has engaged in discriminatory practices. The causal connection between protected activity and the adverse employment decision

was established by the close proximity in time between the teacher's criticisms in the staff meeting and the directives from the principal. Given the fact that no previous performance evaluations indicated any deficiencies in performance, the demands of the principal to submit lesson plans and the notice of nonrenewal that followed were sufficient circumstantial evidence to justify a decision for the teacher.²⁰

School Officials Avoid Liability for Sexual Harassment Through Immediate Intervention and Investigation of Complaint

A female school custodian was subjected to hostile environment sexual harassment by an Ohio elementary school principal. The principal was found to have followed the custodian around the school and watched her while she ate lunch. He made suggestive comments to her, and in one instance, he assaulted her in the boiler room area of the school by forcing her against a wall, holding her against him and fondling her breasts and buttocks. In this latter instance, the custodian vomited, and the principal stopped the assaultive behavior.

The custodian reported these instances to a supervisor and the supervisor notified the district. Upon notification, the district employed a law firm to conduct an investigation. The results of the investigation led to the discharge of the principal; however, the custodian then brought an action for damages against the district.

A federal district court ruled that the custodian failed to establish that the school district was liable for the acts of the principal. Despite the fact that the custodian was supervised by a central office administrator, the court found that the school principal could be regarded as a

supervisor for purposes of determining school district liability. The principal's harassing conduct took place within the scope of his employment, but the court found that the district could not be held liable for his conduct because district officials responded adequately and effectively to the principal's harassment. The head custodian met the custodian at the school site following her report of the harassment to prevent her from being alone at the school with the principal. The

board immediately employed a law firm to conduct an investigation of the alleged harassment, and the investigation was concluded within a month, leading to the dismissal of the principal. In the absence of evidence that school officials had knowledge of previous instances of harassment by the principal, they could not have foreseen that the principal would engage in the impermissible behavior.²¹

Pupils

The student's legal rights extend to constitutional and statutory guarantees related to free speech and association, privacy, due process of law, and equal protection of the laws. Judges typically balance the interests of the state in maintaining the efficient operation of schools against the individual rights asserted by the student or parent. As the following cases illustrate, the authority of school boards and school officials in the exercise of control over students is judicially recognized. Courts have granted school officials a generous measure of discretion, particularly where school officials articulate legitimate pedagogical concerns or act in good faith to protect the physical health and safety of students.

Federal Gun-Free School Zones Act Is Found Unconstitutional

A Texas 12th-grade student was charged with violation of the Gun-Free School Zones Act of 1990 after he was discovered with a handgun at school. The act forbids "any individual knowingly to possess a firearm at a place that [he] knows ... is a school zone." The student was in possession of a concealed .38-caliber handgun and five bullets, which were found after an anonymous tip led school officials to confront the student. After a federal district court denied a motion to dismiss the indictment, an appeals court found that the law was beyond the powers of Congress. The case was then appealed to the United States Supreme Court.

Chief Justice Rehnquist wrote the majority opinion and held that the Gun-Free School Zones Act, making it a federal offense for any individual knowingly to possess firearms at or near a school, exceeded the constitutional authority of the United States Congress. The essence of the majority view was that the criminal statute had nothing to do with Congress's authority to legislate under the commerce clause of the United States Constitution. Possession of a gun was not an economic activity within the meaning of the clause and had no relationship to the regulation of interstate commerce. The majority opinion emphasized that the defendant was a local student at a local school, there was no indication that he had recently moved in interstate commerce, and there was no requirement that his possession of the firearm have any concrete tie to interstate commerce.

The Constitution created a federal government of enumerated powers. In the Court's view, to find that Congress had the power to legislate criminal statutes on such a basis would convert congressional authority to a general police power that the Constitution reserves to states.¹

Board's Denial of Access to Religious Group Violates Freedom of Association and Assembly

A Missouri school district's policy adopted a "use of premises" policy that denied use of school facilities to all community groups except the Boy Scouts and athletic groups between 3

and 6 p.m. on school days. The policy also prohibited the Scouts from engaging in any religious speech during the 3 to 6 p.m. period.

A local community group, the Good News/Good Sports Club, challenged the policy as a violation of the right to freedom of association. The club sought to foster the moral development of junior high school students from the perspective of Christian religious values. It was a religious, nondenominational group that required parental consent before a student could attend a meeting. The club had met at a junior high school in the local school district from 1988 until the district's use policy was adopted in July of 1992.

A federal district court ruled for the district, emphasizing that the district's facilities were a nonpublic forum from 3 to 6 p.m. on school days. The court found that the long-standing relationship with the Scouts was a reasonable basis for an exception for that group, and noted that the school board's concern for a potential violation of the establishment clause of the First Amendment justified the policy.

However, the Court of Appeals for the Eighth Circuit reversed the district court, holding that the school district's policy resulted in impermissible viewpoint discrimination violating the First Amendment guarantee of free speech and association. The court cited the U.S. Supreme Court's decision in *Lamb's Chapel v. Center Moriches Union Free School District*,² holding that the school board had engaged in viewpoint discrimination when it permitted the Scouts to use the facility but denied access to the Good News/Good Sports Club. While the district court had taken the position that the Boy Scouts of America was a secular organization that could be distinguished from the club's religious purposes, the appeals court found that the goals of both organizations involve the same category of speech:

moral and character development. The club offered a religious viewpoint regarding moral and character development, and the school district policy, while not hostile to the viewpoint, did discriminate against the club by prohibiting its presence at times when the Scouts could use the facilities.

Although the school board argued that viewpoint discrimination could be justified by the district's interest in avoiding a violation of the establishment clause, the appeals court rejected this position by examining the previous policy allowing community groups to use school facilities immediately after the end of the school day. The appeals court found that this policy did not violate the three-part test of religious establishment, and concluded that there was no need to abandon that policy on the presumption that it violated the establishment clause.³

Board's Prohibition on Showing of R-Rated Films Is Upheld

A Wisconsin superintendent's enforcement of a school board policy prohibiting the showing of any R-rated film as part of the curriculum of the school district was challenged by a 10th-grade student who wished to see the film "Schindler's List" as part of a supplement to a 10th-grade history program. The R rating meant that the Motion Picture Association of America found that the film contained language, sexual content, and/or violence that constituted adult material that parents should evaluate before allowing a teenager to watch it. The request to see the film came first from high school teachers who asked that the school principal request an exception to the policy. When this approach was rejected by the superintendent, students peti-

tioned the local board, but the local board refused to take action.

A federal district court emphasized that while students do not lose their federally protected rights when they walk through the school house door, the right to free speech must be tempered in the context of the classroom by the presumption that school officials enjoy considerable discretion in determining the content of the curriculum. School officials have abundant discretion to construct the curriculum as long as they demonstrate that their decisions bear a reasonable relationship to a legitimate pedagogical concern.

It could not be shown that school officials were motivated by a desire to deny access to the film because of their intolerance for the political or philosophic viewpoints expressed. Rather, the court found that an irrebutable legitimate pedagogical concern was expressed in the policy, which sought to reduce the students' exposure to movies with too much violence, nudity, or inappropriate language. Since schools and classrooms are nonpublic forums, the board need only show that its decision to rely on the rating code as a basis for restricting the showing of films as part of class activities bore a reasonable relationship to a legitimate purpose. The court found that reliance on the rating system was a reasonable way of determining whether the film's material would be inappropriate for student audiences.⁴

Refusal to Accept Student's Research Paper on "Life of Christ" Is Justified

A Tennessee junior high school student challenged a teacher's decision to refuse to accept her research paper entitled "The Life of Jesus Christ." The assignment required that the student learn how to research a topic, synthesize the

information gathered, and write a paper using that information. The teacher emphasized that students could not merely expound on their own ideas, and must use at least four research sources in performing the research. The student's only reference for her paper was the Bible. When the student refused to modify her paper, the teacher gave her a grade of "zero" for the project. In her challenge, the student contended that rejection of her topic violated her rights to free speech under the First Amendment. After the suit was dismissed in the lower court, the student appealed to the federal appeals court.

In rejecting the student's challenge and affirming dismissal of her claim, the federal appeals court emphasized that courts should exercise particular restraint in classroom conflicts that arise between student and teacher over matters falling within the content of the curriculum. The court used an analogy to the role of judges in developing its rationale in support of the teacher:

Like judges, teachers should not punish or reward people on the basis of inadmissible factors—race, religion, gender, political ideology—but teachers, like judges, must daily decide which arguments are relevant, which computations are correct, which analogies are good or bad, and when it is time to stop writing or talking.... To this end teachers, like judges, must direct the content of speech.... Teachers therefore must be given broad discretion to give grades and conduct class discussion based on the content of speech. Learning is more vital in the classroom than free speech.⁵

Refusal to Publish Student's Reviews of R-Rated Films Is Unjustified Violation of Free Speech

A New Jersey principal's decision not to permit the publication of a student's reviews of R-rated films in the high school newspaper was found to violate First Amendment rights to freedom of speech. School officials refused to permit publication of the reviews on the basis that their

action was reasonably related to legitimate pedagogical concerns. While the New Jersey Supreme Court agreed that a sponsored high school newspaper is arguably a nonpublic forum reserved for curricular objectives, the court found that the removal of articles could not be justified on the basis of legitimate pedagogical concerns. In this case, the court found that the R-rated-movie reviews did not raise educational concerns that called for editorial controls.

School officials emphasized that school board policy justified removal of the reviews because the reviews constituted "material which advocated the use or advertised the availability of any substance believed to constitute a danger to student health." It was not explained how the publication of the reviews posed a danger to student health, and the court concluded that the policy as implemented was so loosely applied that its underlying educational concerns remained essentially speculative. Having failed to establish a legitimate pedagogical basis for denying publication of the reviews, the school authorities were held to have violated the student's expressional rights under the First Amendment.⁶

Court Strikes Down Prior Restraint Policy on Distribution of Student Religious Materials at School

A Florida elementary school student sought to distribute a religious flyer and an invitation to a party as an alternative to Halloween Trick-or-Treating. When she requested permission from her teacher, the materials were taken from her and given to the principal. At the end of the school day, the principal explained that he could not permit the distribution of religious materials at school and that the materials had been discarded. The student challenged the school policy

requiring prior approval of written materials as a content-based prior restraint on speech, arguing that the school policy was used to screen and prohibit the distribution of materials with religious content.

The federal district court found that the policy was an unconstitutional prior restraint on free speech. Despite the school district's assertion that the restriction's application to religious materials was designed to comply with the establishment clause prohibition on advancing religion in the public schools, the court concluded that the scope of the policy granted too much discretion to school officials in determining what could be distributed at school. In the court's view, the policy was overly broad as written, and limited application would not save such a policy. Even if the prior restraint policy applied only to religious speech, the court found that it did as much to create an unconstitutional governmental inhibition of religious speech as to promote or advance religion.⁷

School Restriction on Wearing Apparel Containing Vulgarisms Is Upheld

A Massachusetts school dress code provision that prohibited wearing apparel that contains vulgarisms or that "harasses, threatens, intimidates or demeans" individuals or groups was challenged by high school students. The code was applied in disciplining two students who wore T-shirts to school. One shirt read "See Dick Drink. See Dick Drive. See Dick Die. Don't Be a Dick." and the other read "Coed Naked Band: Do It To the Rhythm." Students argued that the discipline imposed for wearing the shirts violated their free speech rights under the First Amendment.

In reviewing the disciplinary actions and the provisions of the school code that were involved, the state court concluded that there are minimal First Amendment limits on the discretion of secondary school officials to restrict "vulgar" speech. Consequently, the court vindicated the authority of school officials to discipline students for the sexual double entendre on the T-shirts, even in the absence of disruption of the school environment. In answer to the question, "What is vulgar?" the court left the determination to the citizens of the community, their elected school board, and the school officials the board appoints.

However, the court allowed the students' motion to enjoin enforcement of that portion of the code dealing with prohibitions on harassing speech, reasoning that only in circumstances in which the clothing would create a danger of material and substantial disruption of the school environment could such a rule be enforced by school officials. To rule otherwise would permit school officials to circumscribe improperly the expression of opinion on controversial issues, even where that expression contained no vulgarity and offered no threat to the orderly performance of the school's educational mission. Citing *R.A.V. v. City of St. Paul*,⁸ the court found that the potential for applying the code provision in a way that would suppress controversial viewpoints would be likely to violate free speech.⁹

Supreme Court Upholds Random Urinalysis Policy for Student Athletes

An Oregon school district adopted a random urinalysis testing program for students participating in athletics programs. When a student refused to consent to the policy, the school district denied the student the right to participate

in the school's football program, and the parents filed suit.

Drugs had been discovered to be a major problem at the school after a series of incidents in which students boasted of their attraction to the drug culture and disciplinary problems increased. Evidence had emerged that student athletes were among the leaders of this drug culture within the school. This latter discovery was a particular cause of concern for school officials because of the heightened risk of sports-related injuries that could be associated with drug use by athletes. Initially, the district responded to the problem by providing special classes, speakers, and presentations designed to deter drug use, as well as using specially trained dogs to detect drugs. However, the problems persisted.

Parents and school officials developed a drug testing program for all students participating in interscholastic athletics. Consent for testing was required for participation, all student athletes were tested prior to the beginning of the sports season, and weekly random testing was undertaken during the season. Students selected in the random draw were given a specimen vial and accompanied by a monitor to an empty locker room where, remaining fully clothed with back to the monitor, the student produced a specimen at a urinal. Girls produce a sample in a closed stall, where they can be heard but not observed. Results were analyzed at an independent lab and communicated to authorized school officials only.

The United States Supreme Court, in an opinion by Justice Scalia, found that drug testing of students was a search under the Fourth Amendment, and applied a test of "reasonableness" by balancing the student's right to be free of governmental intrusion against the state's promotion of a legitimate governmental interest. The

Court concluded that in this case, the school district's interests were more substantial. The students in this case were committed to the custody of the state, giving the state a degree of supervision and control greater than it could exercise over free adults.

In particular, athletes have an even lesser expectation of privacy because there is an element of communal undress in their participation on school teams and they must submit to regulations of conduct and physical examinations as part of their participation. The process of obtaining urine samples is not highly intrusive, and any compromise of the students' privacy interests is negligible. Therefore, the court concluded that the school district's interest in deterring drug use and the desirability of reducing the risk of injury associated with drug use among student athletes justified the policy.¹⁰

Metal Detector Scans and Bag Searches Are Ruled Permissible

A Pennsylvania urban high school enforced its policy forbidding drugs or weapons on school property by employing police officers to conduct in-house metal detector scans and bag searches of students. Signs were posted warning of the search policy, and parents were notified of the policy periodically during the year. The procedure for conducting the searches involved bringing students coming onto the school grounds into the gym, where they formed lines and step up to a table where each student emptied his or her pockets, surrendered his or her jacket or any bags in his or her possession, and was scanned by an officer using a metal detector. In this case, the student surrendered a Swiss-army-type folding knife when emptying his pockets, and was arrested for possession of a weapon on

school property. When he sought to suppress the evidence as the fruit of an illegal search, the motion was denied by the trial court and an appeal followed.

The Pennsylvania appeals court ruled against the student and denied the motion to suppress the evidence obtained in the search. The court based its decision on two primary factors. First, in light of the school's efforts to make students and parents aware of the search procedures, the student's expectation of privacy was greatly reduced. Second, the search was justified given the high rate of violence in the district's public schools.¹¹

School Administrators Do Not Violate Privacy When They Question Students About Child Abuse or Drug Use

A Pennsylvania minor was taken from her class and questioned by school administrators about physical abuse at home. The questioning took the form of an interrogation in which the school administrators suggested that the child's father drank too much and physically abused his wife and the child. During the interrogation, the child asked for her parents, cried, and ran from the office, hiding in a restroom.

Alleging a pattern of harassment, the family of the student maintained that the school principal was engaged in a personal vendetta against the members of the family. After the allegations of child abuse were investigated and social services ruled that the charges against the father were unfounded, the parents sued the school district on the grounds that the child's Fourth Amendment rights had been violated.

The federal district court concluded that there was no violation of the child's Fourth Amendment rights to be free from an unreason-

able search and seizure in the questioning by school officials. Even though the student was reduced to tears by the questioning, and she felt sufficiently threatened to run from the room and hide in a school restroom, the court would not agree with the contention that the questioning was unreasonable. In the court's view, the minor's reaction could have been related to a fear of reporting abuse. Any interest the student had in an expectation of privacy must give way to the state's interest in reporting suspected child abuse when there is reason to believe that such abuse is occurring or has occurred. The court held that the Fourth Amendment is not violated when school administrators question a student in order to determine whether there is "reason to believe" that a child is abused.¹²

In a similar case, a 12-year-old Minnesota student complained that school officials had accused her of lying, threatened to call her parents, followed her to classes, and intimidated her at school and off school grounds in an effort to discover whether she was involved in drug use. The school officials had questioned and observed the student after another child's parent reported that the student carried a roll of cigarette papers in her flute case. In response to a suit alleging deprivation of her rights to due process, a federal district court dismissed the claim. The court found that, in the absence of any allegation of physical restraint or intrusion upon bodily security, there was no constitutional violation under the Fourteenth Amendment.¹³

School Officials Are Permitted to Remove Child from School Based on Suspicion of Child Abuse

A New York kindergarten student, who suffered from "elective mutism," communicated

through words and gestures that her father had sexually abused her. The teacher in whom the child confided reported the event to her superiors, who then reported the information to social services.

After interviewing the parents at their home, and meeting with the child and the teacher at the school, social workers effected an emergency removal of the child from the school and took her to a local hospital to be examined for possible child abuse. No effort was made to obtain a court order for the removal or the subsequent medical evaluation of the child. The medical examination found no evidence of abuse, and the case was marked "unfounded" by officials. The child's parents sued the school district and social workers, alleging that the child's Fourth Amendment rights were violated by the invasive physical examination conducted without a warrant or probable cause.

In response to the suit, both the school officials and social workers sought a summary judgment on the grounds that they had qualified immunity for conducting such a search. The federal district court ruled for the officials, finding that although the search was highly intrusive, the officials were justified in removing the child from school based on a legitimately perceived emergency. Given the facts of the case, the court was convinced that the officials had reasonable cause to conclude that the child had been a victim of sexual abuse and that returning the child to her home would place her at imminent risk for further abuse.

However, the court did not agree that the existence of an emergency justified the highly invasive physical examination to which the child was subject. In that situation, the court took the position that the medical examination should have proceeded only after an independent determina-

tion by a qualified magistrate that such an examination was warranted.

Since the law on this question was unsettled at the time the case came to trial, the court held that school officials and social workers could not be held responsible for a knowing violation of the child's right to be free from unreasonable searches under the Fourth Amendment.¹⁴

In a similar case, social workers and school officials who questioned a nine-year-old student for 10 minutes about an allegation that he had sexually assaulted a five-year-old child were immune from liability for violating the student's substantive due process rights. The federal appeals court found that a 10-minute initial interview was insufficient to trigger any right to liberty or privacy.¹⁵

Search of Student's Purse Justified by "Totality of Circumstances"

A Hawaii high school student was subject to a criminal prosecution for possession of a bag of marijuana. The student sought to suppress the evidence of this crime by arguing that the search and seizure of the bag by school officials violated her Fourth Amendment rights.

The search occurred when high school administrators observed the student and her companion leave school grounds without authorization and cross the street to an area called the "Tunnel," a culvert system off school grounds where students were known to congregate to smoke tobacco cigarettes and marijuana. A vice-principal and school security officer followed the students into the area, detected the order of burning marijuana, and observed four students congregating near a grate. All four students exited when directed to do so, but only two students

were carrying purses. The two students who were carrying purses were subject to search, and the marijuana was found when the student emptied the contents of her purse on the principal's desk.

The state supreme court held that searches in the school setting must be reasonable under all the circumstances and must be justified at inception and reasonably related in scope to the circumstances that justified the search. The court found that there was a reasonable suspicion for the search of the student, given the totality of all the circumstances. Among the considerations the court thought relevant: the students were in a location where students were known to smoke marijuana; officials detected the odor of marijuana; and there were only four students in the area. Credible evidence supported the search of the purses, since this would be a likely storage place for the drug. Once the marijuana was discovered, no further search took place. The court concluded that the search of the purse was not so highly intrusive as to violate the Fourth Amendment under the circumstances. In response to the argument that school officials lacked any individualized suspicion to justify the search, the court ruled that individualized suspicion as a requirement was met because the search could be narrowed to the four students discovered in the "Tunnel" and further narrowed to the two students who had purses.¹⁶

Mere Hunch That Student Is in Possession of Drugs Does Not Justify Search

A student attending an Illinois alternative school sought to suppress the evidence obtained in a school search that led to a criminal prosecution for possession of cocaine. A school secur-

ity officer conducted the search, which led to the discovery of cocaine in the student's flashlight.

The officer had initially undertaken a search of another student's locker after two teachers expressed their suspicion that this student had brought drugs to school. No drugs were found in the locker, but the defendant approached the student in the presence of the officer, and the officer testified that it was his impression that the defendant and the fellow student had the attitude that they had "played [the security officer] for a fool, and gotten something over on [him]." The officer noticed that the defendant had a flashlight in his hand, and asked what he was doing with a flashlight. The defendant said he was going on a museum field trip that day and had brought the flashlight along. The officer then took the flashlight from the student, unscrewed the cap and found five baggies containing a white, rock-like substance under the flashlight batteries.

The state appeals court ruled that the officer lacked sufficient reasonable cause to undertake the search. The officer's hunch that the flashlight contained drugs was not supported by any actual evidence, and there was no rational foundation for his decision to undertake the search. It appeared from the officer's testimony that he was motivated to conduct the search by the association between the two students and their attitude toward him. Since the search of the first student had yielded nothing, there was no basis for suspecting the defendant of drug possession simply because he was associating with the first student. Based on the conclusion that the search was not justified at its inception, the court ordered that the evidence used to convict the student of the criminal charges be suppressed.¹⁷

Telephone Tip and Background of Student Justify Search of Bookbag, Backpack

A New Hampshire assistant principal received an anonymous phone call in which the caller said that a particular student at the high school would be carrying drugs, including LSD, to school that day. The caller identified the student by name, and the assistant principal knew of the student as a result of reports from teachers that the student had been involved in a drug transaction at school and had been arrested for drug possession in another state. The student, who reported late for school, was called into the principal's office and told to turn his pockets inside out. The contents of his pocket's included a pipe and rolling papers. The principal then required the student to open his knapsack, which held several bags of marijuana and an unloaded semi-automatic pistol. In a later criminal prosecution, the student sought to suppress the evidence of the search.

The Supreme Court of New Hampshire ruled that the search did not violate the student's Fourth Amendment rights, holding that the search was reasonable under the circumstances. In this case, the search was justified at inception because of the totality of circumstances surrounding the search. The telephone tip, which specifically identified the student, together with the existing suspicions of the student's drug involvement, was enough to justify the initial search. The discovery of the pipe and rolling papers provided further evidence of probable drug possession that justified the search of the knapsack. The student's motion to suppress this evidence in the criminal prosecution was denied.¹⁸

In a similar case from California, the high school vice-principal received a telephone tip from the parent of a student. Although the caller

identified herself, she asked for confidentiality out of fear for the safety of her child. The parent reported that a specific student had been seen by her son with a loaded handgun at a high school football game the previous evening. The vice-principal searched the student's locker after observing the student putting a backpack into the locker, and the handgun was discovered.

Rejecting the motion to suppress this evidence at a criminal trial, the state appeals court ruled that the circumstances justified the search of the locker. The court emphasized that the school official had information from a reliable source who had identified herself, and whose concern for confidentiality and the safety of her own child suggested her motive for calling was a factor in increasing the reliability of her testimony. The court reasoned that school officials should investigate reports that particular students are carrying firearms onto campuses by the minimal intrusion of checking the contents of a student's locker.¹⁹

Strip Search to Underwear Is Upheld by Federal Court

A 13-year-old male student in a Kansas high school was accused by a visitor to the school of having stolen \$150 from the front seat of her car. The visitor was questioned by school officials and indicated that she knew the student and that the student had a history of involvement with the police. The student was brought into the principal's office, and, after questioning, he was searched. An assistant principal of the same sex as the student conducted a search that included reaching into the student's pockets, patting the student down, removing the student's shirt, unbuttoning the student's cut-offs and lowering them to the student's knees, touching the inside waist band of the student's jockey shorts, and

requiring the student to pull up his shorts to detect by observation whether he was hiding anything in the shorts. The searches did not uncover any money.

Using a two-fold inquiry to determine whether the search was reasonable under the totality of circumstances, the court sought to determine whether the search was justified at inception and reasonable in scope. The court found the search justified at inception, because the testimony of the adult visitor supported a reasonable suspicion that the student had stolen a large sum of money. Relying on recent cases in which courts have permitted similar searches when drugs or weapons were alleged to be in a student's possession, the court also concluded that the search was reasonable in scope. The court emphasized that the search was conducted in the privacy of the principal's office with two male administrators present and the student was not touched inappropriately or compelled to remove his underwear.²⁰

Placing Student in Detention Facility's Holding Room Does Not Violate Liberty Interests or Privacy Rights

The parents of a Texas sixth grader sued school officials for alleged violations of the student's Fourth Amendment rights to privacy and his right to liberty under the Fourteenth Amendment. The student had been placed in a cell at a juvenile detention center during a school tour. The student was advised, along with 103 of his peers, that proper conduct, consistent with detention center policy, was required of all student visitors. As the tour proceeded, the student was repeatedly cautioned for being inattentive and disrespectful. When he persisted, a teacher and a center employee agreed to place the student in a

holding room so the tour could continue without distraction. The student was locked in the room, which contained a bed and a toilet, for about 50 minutes, and was regularly monitored during that time. When the tour was completed, the students were brought to the room the student was in and had the opportunity to observe the student in the holding room.

The federal appeals court first held that placing the student in the detention facility's holding room must be evaluated in light of the school's responsibility for the preservation of order and a proper educational environment. The court found that the actions of the employees properly furthered the maintenance of discipline within the touring group, thus making it possible for the other students to continue their educational experience, and concluded that the seizure was justified at its inception. The placement in the holding room was also reasonably related in scope to the circumstances, since the room in which the student was placed both protected him from potentially dangerous juveniles housed at the facility and the period of his detention was limited to 50 minutes.

The parents' claim that the student was "incarcerated" in a "jail cell" was overstatement in the view of the court. Specifically, there was no violation of due process in the trivial deprivation of liberty associated with discipline for a period of 50 minutes. Nor did the argument that a better punishment may have been available establish that the punishment administered was unconstitutional. Finding no violation of a constitutional right, the court reversed the lower federal court's ruling and granted a motion for summary judgment to the employees.²¹

Teacher's Forcible Ejection of Student from Classroom Is Permissible Conduct

A junior at an Illinois high school sued a teacher for violation of her Fourth and Fourteenth Amendment rights based on an allegation that the teacher had forcibly ejected the student from his classroom. The student was engaged in a shouting match with another student when the teacher, who had left the room while students were working on individual projects, returned. The teacher told the students to sit down, and intervened when one of the students charged at the other. The teacher told the threatened student to leave the room, and she claimed that she was about to do so when the teacher reached over a desk, grabbed her arm and wrist, and tugged at her to force her to leave. In the course of these events, the student fell to the floor. Once the commotion in the classroom had subsided, she was released to go to the nurse's office where she was treated with an ice pack for soreness.

The federal district court ruled in favor of the teacher and the school district on a motion for summary judgment. First, the court concluded that the claim of a violation of Fourth Amendment rights should be treated as a case of excessive force, and reasoned that unreasonable seizures involving excessive force apply only where law enforcement engages in excessive force during the course of an arrest. Although the student was momentarily seized, this is not the type of seizure to which the Fourth Amendment applies.

Second, the court rejected the claim that the student's substantive due process rights were denied under the Fourteenth Amendment. The court applied the standard that due process rights are violated in the context of disciplinary use of force only when the punishment inflicted is so grossly excessive as to be shocking to the con-

science. Using this standard, the court ruled that while the teacher's actions might have been careless or overzealous, they were not inspired by malice, but rather by a desire to guide the student away from a potentially dangerous situation. Consequently, the teacher's actions did not violate due process.²²

Restrictions on Students' Jewelry, Clothing Are Justified by Schools' Discipline Interests

A fourth-grade student in an Indiana school district challenged the district's policy forbidding the wearing of "jewelry or other attachments not consistent with community standards or that could pose a health or safety hazard to either the student himself or to other students in his presence." When the student continued to wear an earring after being warned of the policy, he was suspended. The parents challenged the suspension decision, contending that the student's right to due process includes a right to the possession and control of his own person in matters of personal appearance.

The state appeals court ruled against the parents' claim and upheld the policy as rationally related to a valid educational objective. Evidence was presented that the enforcement of a strict dress and appearance code was a factor in improving student attitudes toward school, and that improved attitudes led to improved attendance and academic performance. There was further evidence that the earring rule was consistent with contemporary community standards in the local community. While school officials asserted that the rule also prevented student gangs, discouraged homosexuality, and promoted good health, the court discounted these assertions as either unfounded or not supported by the evidence.

However, the court held that the rule met the standard of reasonableness in that it contributed to the maintenance of appropriate discipline and a positive educational environment.²³

In a similar case in Texas, the state supreme court was asked to decide whether students who have reached the state-mandated age of majority (18) should be exempted from hair length and earring restrictions imposed by the school district. In this case, the school regulation was implemented to teach grooming and hygiene, instill discipline, prevent disruption, avoid safety hazards, and teach respect for authority. The class of students was represented by one 18-year-old male student who claimed that the policy was discriminatory in that it applied only to male students.

The court ruled that the student's claims did not amount to such an affront to constitutional rights as to warrant court intervention. Reasoning that the rights of public school students are not coextensive with the rights of adults in the larger society, the court found that the interests of the school district in maintaining discipline was a more substantial interest than that of the student in this case.²⁴

District Is Not Liable for Death of Student Who Left Campus Without Permission

The parent of a 15-year-old student who was killed in an auto accident sued a Georgia school district, alleging that the student's constitutional right to substantive due process had been violated by the school district's failure to adequately supervise him. The student and a friend had left a voluntary summer school session at the local high school in violation of school rules.

A federal district court ruled against the parent's claim, holding that the school district

had no constitutional duty to protect the student because he was not in its custody and because his death was caused not by the school but by a private actor with no special relationship to the school. The parent appealed, urging that the school district owed the student a constitutional duty to prevent him from leaving school in an automobile during school hours.

A federal appeals court ruled against the parent, finding that compulsory attendance laws do not create the necessary custodial relationship between school and student to give rise to a constitutional duty to protect students from harm by non-state actors. The court noted that other federal appeals courts have reasoned that mandatory attendance at a public high school simply does not restrict a student's liberty sufficiently to create a custodial relationship. Since this student was attending the summer program on a voluntary rather than a compulsory basis, the weight of authority was even more compelling. The student's death resulted from his own choice to leave the school in violation of the school's policies, and the mere fact that the school did not effectively prevent him from leaving did not constitute a violation of substantive due process. The court concluded that there could be no special relationship creating liability when the school did not create the dangerous situation or render the student more vulnerable to it.²⁵

Release of Student to an Unauthorized Person Does Not Create Basis for Violation of Liberty Rights

The surviving heirs of a student who was released by a Kentucky school into the hands of an aunt sued the district when the child died at the hands of the aunt and his stepmother. The aunt used an alias when she went to the school to pick

up the 10-year-old child, which aroused no suspicions because the child seemed to know the person and did not protest the arrangement. The child was found dead almost a week later, and the stepmother and her accomplice were charged with the murder of the child. At the time the child was released from school, the natural mother had completed a release form specifying the persons authorized to take the child from the school. The school secretary had released the child, but was not aware of the release authorization form or the school district's policy on seeking authorization for a release from the school principal.

The federal district court held that no special-duty relationship was created between the student and the school that would give rise to liability for the child's death. As in other recent cases, the court was unwilling to hold that compulsory attendance laws create liability under the circumstances of this case. Furthermore, the court noted that substantive due process under the Fourteenth Amendment is not intended to extend to actions that implicate negligence on the part of school officials.²⁶

District Is Not Liable for Injuries to Student Shot on School Grounds

The family of a Texas student sued the high school principal and the school district when the student was shot and killed by a stray bullet fired by a nonstudent who had brought a concealed handgun into the school. The assailant rode a school bus to school on the day of the shooting, and entered the school building without being detected. Although students were required to wear identity badges and pass through metal detectors, the nonstudent escaped detection until he started a disturbance and fired the handgun. A

federal district court dismissed the suit and the family appealed.

The federal appeals court affirmed dismissal of the suit, and held for the school district and the school principal. The court rejected the family's reliance on a theory of state-created danger, holding that in order for liability to be based on such a theory, the school district must be shown to have created the environment that was dangerous and to have known it was dangerous. Even though the use of security measures like metal detectors and identity badges was haphazard, there was no evidence of deliberate indifference on the part of school officials. Furthermore, the court reasoned that the student's death was attributable to the circumstance that an armed, violent nonstudent trespassed on the school campus, and there could be no liability for the school district or its employees for this random criminal act that was not foreseen.²⁷

Teacher's Failure to Report Sexual Abuse of Student by Another Faculty Member Could Result in Liability

A Texas student sued a teacher for failing to report that the student was being sexually abused by her high school coach. The teacher was alleged to have known of the sexual abuse, but to have failed to report her knowledge of the situation for several months. The teacher defended against the suit by claiming qualified immunity and seeking a motion for summary judgment.

The court rejected the teacher's request for summary judgment in her favor, finding that the student had pled facts that created a material issue on the teacher's liability for violating the student's rights. The court reasoned that Texas law requires teachers to report instances of child sexual abuse, and the pleadings raised an issue of

fact as to whether the teacher had failed to report abuse of which she was aware. Furthermore, the court concluded that the teacher could not claim qualified immunity, because at the time the alleged instances of sexual abuse occurred, the student's constitutional rights to bodily security and the teacher's duty to report child abuse were clearly established.

The court concluded that material issues of fact as to whether the teacher knew that the coach was sexually abusing the student, whether the teacher knew or should have known that the student was unable to end the abuse on her own, and whether the teacher disregarded her obligation to report the abuse precluded summary judgment for the teacher.²⁸

Principal's Response Creates Qualified Immunity in Coach's Sexual Abuse of Students

Three Texas high school students brought action against the high school principal for failing to prevent a high school coach's alleged sexual abuse of the students. The male students alleged that the coach had engaged in unpermitted touching of the students, and, in at least one instance, sexual relations with a student. In each instance in which a student reported his complaint to the school principal, the principal interviewed the student, informed the accused coach, undertook an investigation, and reported the findings of the investigation. In a series of three instances that were reported over a two-year period, the complaints were found to be inconclusive, but the principal continued to monitor the coach's behavior. The principal moved for summary judgment on the grounds of qualified immunity, and the federal district court denied the motion.

A federal appeals court reversed the denial of summary judgment and held that the principal was not deliberately indifferent to allegations regarding the coach's sexual abuse of students. In each instance of a complaint, the court found that the principal had interviewed the students, parents, and other teachers. The principal also documented the findings and results of his investigations through memoranda to superiors and requested further direction. Although the students contended that the principal did not follow all of the procedures recommended in an administrative handbook on dealing with complaints of sexual misconduct, the court found that the principal's failure to follow all of the guidelines did not establish that he was deliberately indifferent. The court concluded that the principal was entitled to summary judgment on the basis of qualified immunity.²⁹

District's Failure to Report Former Employee's Sexual Abuse of Student Could Result in Liability for Later Abusive Conduct

A Pennsylvania nine year old was sexually abused by her music teacher at a Philadelphia school. The teacher subsequently pleaded guilty to sexual abuse of a child. The parents of the child sought damages against another school district where the music teacher had worked previously, on the basis that the district was negligent under state law and violated the child's substantive due process rights by failing to report instances of sexual misconduct on the part of the teacher during the period of his employment with that district. During this earlier period of employment, the teacher had engaged in a sexual relationship with a 12-year-old student. When the relationship was discovered, he was forced to

resign, officially for "personal reasons." Three weeks after his resignation, the teacher applied for a position in the Philadelphia public schools; in response to an inquiry about his previous performance, it was reported that he had been "satisfactory" without any reference to his sexual misconduct with a student.

A federal district court ruled that the student who was abused by her music teacher sufficiently stated a Section 1983 claim against the school district that had previously employed the teacher. Allegations that the district concealed the teacher's sexual abuse of a former student by allowing the teacher to resign for "personal reasons" and reporting the teacher's performance as satisfactory to the district that then hired him supported a pattern of deliberate indifference which, if proved, could establish liability. The student's claims were sufficient to allege that the former district engaged in a policy, procedure, or custom that demonstrated deliberate indifference toward the rights of the teacher's future students. The student's right to personal security was sufficiently established to preclude a finding that the officials of the former district were protected by qualified immunity.³⁰

District's Failure to Prevent Peer Sexual Harassment Could Result in Liability

A California 11-year-old student in a sixth-grade class brought an action through her parents for sexual harassment based on allegations that a student teacher assigned to the class sexually harassed her and that male students in the class engaged in sexual harassment. The student's complaint alleged that the student teacher had approached the student on the playground and fondled her buttocks, called her an inappropriate nickname, and sat down close behind her with

his legs straddling her body and leaned over her, resuming this same position when she moved away from him. The peer sexual harassment was alleged to have occurred in a variety of forms, including inappropriate comments by male students in the classroom, striking of the female student on the playground, and unpermitted touching of the female student's breasts.

The federal district court held that the student-plaintiff had stated a claim of hostile environment sexual harassment based on Title IX. Taking the allegations of the student as true, for purposes of the motion to dismiss the complaint, the court found the complaint to be sufficient to withstand the motion to dismiss since the alleged actions of the student teacher could be construed to involve discrimination on the basis of the student's sex. Construing the conduct of school officials with regard to the complaints of peer sexual harassment, the court found that the allegations could reflect active encouragement of peer harassment, toleration of the harassing behavior of male students, or the failure to take adequate steps to deter or punish peer harassment. In the court's view, if any one of these claims could be established in a trial, the school district could be found liable for peer sexual harassment.³¹

Single Act of Peer Harassment Does Not Establish a Claim Against School District

A Utah high school student claimed that the school district had created and tolerated hostile environment sexual harassment on the basis of the aftermath of a hazing event that took place in the football locker room at the school. As the student, a back-up quarterback on the football team, was leaving the shower, he was assaulted

and restrained by four members of the team who used tape to secure him to the towel racks in the shower area. A fifth student left the locker room and returned with the girl that the back-up quarterback had invited to the high school homecoming dance a few weeks earlier. An investigation of the incident created a controversy that resulted in the football coach's suspension of the back-up quarterback from the team; this action led the acting superintendent for the district to cancel the high school's remaining football games.

In response to the claim of hostile environment sexual harassment, the federal district court granted a motion to dismiss in favor of the school district. The court found that the allegations in the complaint did not support the view that the school district and its officials had engaged in intentional sexual harassment in violation of Title IX. The single act of the football players in hazing the student was insufficient to support a claim of discriminatory intent on the part of the school district. There was no evidence that the school district negligently or recklessly failed to remedy or prevent a hostile environment once the incident became known.³²

School Officials Are Not Liable for Assault by Students with Histories of Violent Behavior

A Texas high school student was sexually assaulted in the girls' bathroom of the school during school hours. The two male students who committed the assault had histories of disruptive and abusive behavior, and one of the students had just been released from the Texas Youth Commission after a two-year period of incarceration. The injured student claimed that the school district's official policies and customs reflected deliberate indifference to the student's constitu-

tional rights by allowing students with a history of violent conduct to be part of the general student population of the high school.

A federal district court granted a summary judgment for the school district on the claim, finding that the state's compulsory attendance laws compelled the school district to enroll the students. The court emphasized that to prove deliberate indifference, the student must show that an unusually serious risk of harm existed, that school officials had actual knowledge of the

elevated risk, and that officials failed to take obvious steps to address the risk. The conduct of school officials did not rise to the level of deliberate indifference because they were bound by compulsory attendance laws, and they responded to the incident immediately upon learning of the assault. Although the students who perpetrated the assault had a history of disciplinary problems, enrolling them in school did not constitute creating a dangerous environment for other students.³³

Special Education

The range and complexity of legal issues that have grown out of the provisions for special education in public schools compelled the development of a new chapter in *School Officials and the Courts* beginning with the 1993 edition. In this area, provisions of the Individuals with Disabilities Education Act (IDEA) are addressed as interpreted by state and federal courts. Issues related to the provision of appropriate public education, inclusion, disciplining the handicapped, and unilateral placement are among those found in the cases that follow.

Modified Sign Language System Meets Requirements for Free, Appropriate Education

Three hearing-impaired students and their parents contended that the local school district's decision to educate them using a particular sign language system other than the one used in the students' homes violated the provisions for free, appropriate education under the IDEA. All three students were severely hearing impaired, and required sign language interpreters in the classroom. The system used in their homes was a strict system, while the school district used a modification. The parents introduced evidence that the students did not make much educational progress once the new signing system was introduced. They also argued that the requirements of an Individualized Education Plan (IEP) compelled the district to use the sign language system that was the choice of the student, not a system

that was applied by the district to all severely hearing-impaired students.

The federal appeals court ruled that the modified signing system used by the district proved adequate in conferring an educational benefit on the children, and met the requirements for a free, appropriate education. The court noted that while evaluations reflected that the students had weaknesses in particular subjects, they all continued to improve academically. While the parents raised legitimate concerns, the court felt that it could not substitute its judgment for that of the school district without evidence that the judgment was not educationally sound.¹

School District's Failure to Inform Does Not Create Significant Denial of Due Process

When the parents of a child with a learning disability moved to a Louisiana district, they brought with them the records of special education services and the previous IEP developed in a Pennsylvania school district. At the time of the child's initial enrollment, there were 14 days left in the school year and the child was placed in a regular 4th-grade classroom. The parents were not given notice of their rights under the IDEA, and the child remained in the regular classroom for the remainder of the school year. In the fall of the next year, the parents placed the child in a private school. Although the child finished the fifth grade and part of the sixth grade at this school, her progress was poor and her conduct

deteriorated. The child was reenrolled in the public school system, but again the parents were not given notice of their rights under the IDEA. At this time, an informal education plan was developed to accommodate the child and the parents consented. The child continued under this informal plan through the sixth and seventh grades, but her overall classroom work suffered due to behavioral problems. The parents ultimately moved the child into a residential program, and sued the school district for reimbursement of their costs.

A federal appeals court ruled that the parents were entitled to only nominal damages for the school district's failure to inform them of the rights under the IDEA when they first enrolled their child in the school district. Since federal regulations grant schools 30 days to hold a meeting and develop an IEP, the time constraints involved in arranging a placement in the last 14 days of the school term mitigated against any school district liability. Although the district was required to inform the parents of their rights, the court emphasized that the child had been enrolled in a special education program at a former school and the parents were aware of the right to a formal evaluation under the IDEA based on previous experience. Furthermore, the district's failure to inform did not affect the parent's unilateral placement decision regarding the child's education.²

School Officials Have Qualified Immunity to Report Suspected Child Abuse Involving Retarded Child

A Pennsylvania teacher became convinced that a 16-year-old student diagnosed with severe autism and mental retardation had communicated to her that his father was sexually abusing him. The school had implemented a facilitated com-

munication technique to work with the student, and it was through this medium of communication that the teacher first believed that the student was attempting to report abuse by the parent. She reported her conviction to school officials and a social worker, but no action was taken because of the uncertainty surrounding the information. Another teacher using the facilitated communication technique was also convinced that the student was being abused. When the student arrived at school in an agitated state, school officials decided to take action. With the assistance of social workers, they obtained a court order transferring custody of the child. A medical examination found no evidence of physical abuse. The parent sued the district for a violation of parental rights and liberty under the due process clause of the Fourteenth Amendment.

The federal district court ruled that the autistic student's parents failed to show that the student's teachers violated any clearly established constitutional rights in connection with the parents' temporary loss of custody of the student due to allegations of child abuse. The parents could not recover under Section 1983 because, although the parents did have a due process right to family integrity, the dimensions of that right were not clearly established when the deprivation occurred. Thus the defendants were not on notice of the reaches of the parents' right, and they were entitled to qualified immunity as a matter of law.³

District Is Liable for Failure to Inform Parents of Right to Request Extended-School-Year Program

Disabled children in a Maryland school district filed suit claiming that the district systematically failed to meet its obligation under IDEA to provide extended-school-year services. The

federal district court reviewing the claim found that the district had not provided any extended-school-year programs in the 10 years since the obligation to provide the services was established under federal law. A district supervisor's memo stipulated that any requests for these services should be referred to him and that the parents should be limited to discussing a 180-day IEP with teachers. No written information of the parent's right to request an extended-school-year program was provided, nor was such a program considered at annual IEP reviews. Finally, the usual approach of school officials was to encourage any parent who requested extended-school-year services to take advantage of the school district's summer enrichment programs rather than demand a specific IEP that would include an extended school year.

The federal district court concluded that the district's failure to inform parents of their rights to request extended-school-year services violated the IDEA. The court emphasized that the district had failed to inform and failed to consider extended-school-year services in annual reviews of the students' IEPs. The district had also violated the substantive requirements by evaluating eligibility on the single criterion of whether a student would suffer some significant regression of skill or knowledge without an extended-year program, and had not considered the related criterion of educational benefit. Finally, the court found the district's two-step process for annual determinations of eligibility for extended-school-year services to be an effort to circumvent the requirements of the law. The court emphasized that the practice built delays into the system, frustrated meaningful parent and teacher participation at IEP meetings, and hampered collection of relevant data.⁴

Court Refuses to Presume That a Neighborhood School Is Part of a Least Restrictive Environment

A 12-year-old Colorado boy with multiple disabilities due to cerebral palsy, including significant mental and physical impairments, sought to remain in his neighborhood school placement along with his siblings. Although the neighborhood school was not fully accessible to him, he was initially placed there. However, the program at the school was designed primarily to serve special education students in the "mild to moderate needs" category. Although the student remained at this school through kindergarten and first grade, he was not progressing well. The multidisciplinary team that met to consider the child's needs recommended placement at a school 10 miles away, which had a specific program for children with severe/profound needs. The parents vigorously protested this placement.

The federal appeals court ruled that there is no presumption in the IDEA that a neighborhood school is part of a child's least restrictive environment. Despite regulations stipulating that "the educational placement of each child with a disability [shall be] as close as possible to the child's home," the court emphasized that the regulations merely provide that disabled children should be educated in the school in which they would be educated if not disabled, unless the IEP requires placement elsewhere. While geographical proximity to the home is relevant, it is not a controlling criterion in determining the appropriateness of the IEP.

Furthermore, a school district is not obligated to explore supplementary aids and services before removing a child from a neighborhood school. It is only so obligated before removing a child from a regular classroom with nondisabled

children. In this case, the parents never objected to the degree to which the child was educated outside the regular classroom—they only challenged his placement outside the neighborhood school.⁵

In a similar case, a federal district court affirmed the decision of a Colorado school district, which denied a disabled student placement at a neighborhood high school. The court ruled that the Americans with Disabilities Act (ADA) was intended to prohibit discrimination on the basis of disability, not to compel affirmative action. The court emphasized that the ADA should not be construed to lead to any result that would alter the specific framework of the IDEA.⁶

Temporary Placement for Special Student Is Justified on the Basis of Parents' Initial Consent

The parents of a 15-year-old Washington student with Tourette's Syndrome and attention deficit hyperactivity disorder charged that the local school district had failed to comply with the IDEA. The student had been enrolled in mainstream schools until his behavior problems at the junior high school began to escalate. He began to disrupt class frequently, taunting other students and insulting faculty with profanity and sexually explicit language. He hit and kicked classroom furniture, refused to follow directions, and became involved in a series of violent confrontations in which he struck other students. He received several one-day suspensions leading up to an emergency expulsion that resulted when he assaulted a school staff member.

The parents initially agreed to a placement in an alternative school until the student could be safely reintegrated into the regular school. Ten days after the alternative placement, they sought a

due process hearing, and formally rejected placement in the alternative program until a new IEP could be developed. When negotiations on a new IEP failed, the parents insisted that the student be returned to the regular classroom.

The federal appeals court ruled that the district did not violate the IDEA. The court emphasized that there was no violation of the IDEA in the school's failure to draft a new IEP before attempting to move the student to the off-campus program. The multidisciplinary team had reviewed the student's IEP and concluded that its objectives could be met at the alternative school. They also recommended that the student be placed at the alternative school on a temporary basis while the parents and the school developed a plan to reintegrate him into a mainstream setting. Since the parents consented to this arrangement, the school was not obligated to draft a new IEP before making its recommendation.⁷

Risk of Injury Justifies Court Orders Removing Students from Current Placements

A Missouri school district was challenged in its attempt to change the educational placement of an allegedly dangerous mentally disabled child. The child was a 13 year old with multiple mental disabilities. She had been diagnosed at various times as demonstrating behavioral disorder, pervasive developmental disorder, autism, and organic brain syndrome. She was prone to impulsive, unpredictable, and aggressive behavior that included kicking, biting, hitting, and throwing objects.

After spending much of her elementary school education in a self-contained classroom with two staff persons supervising her at all times, the child was reassigned to a middle

school. Part of her school day included placement in the regular school classroom for selected activities. In the new placement, the child exhibited a steady stream of aggressive and disruptive behaviors, averaging 15 incidents per week and resulting in 30 referrals to the school nurse. The child's behaviors had a negative, inhibiting effect on other special education students enrolled in the program, and a multidisciplinary team recommended that the child be moved to a self-contained classroom for autistic children in a neighboring district. Because the parents objected to this recommendation, the child remained in the current placement until an incident in which she grabbed the hand of another child in her classroom and struck her in the face three times with her free hand. This led the district to invoke a 10-day suspension and seek to have the child removed from the current placement.

A federal district court granted the district's request to remove the child from the current placement based on the conclusion that maintaining the child in that placement was substantially likely to result in injury either to the child or to others. On appeal of the district court's decision, the federal court of appeals addressed two questions: 1) Must the district court find that the child is not only substantially likely to cause injury, but also "truly dangerous" before sanctioning a transfer? 2) Must a school district make a reasonable accommodation of the child's disability before it can change her placement?

In answer to the first question, the court ruled that the district court need only find that the child's current placement is substantially likely to result in injury to justify removal. Since the record of aggressive behavior more than substantiated this concern, the appeals court concluded that the child need not inflict serious harm before removal was permitted. The court did rule that

there must be evidence that the school district took reasonable steps to minimize the child's propensity to cause injury, but it found that the school district had made reasonable accommodation. The school district showed that it had trained teachers and staff in crisis prevention and intervention, behavior management strategies, and inclusion practices appropriate for the child.⁸

In a similar case, a New York high school student classified as having a learning disability was apprehended while running out of the high school waving an iron bar and yelling threats to kill another student and a teacher. Following the incident, the student was suspended. However, because a suspension beyond 10 days would be a change in educational placement, the school district sought a court order to continue the student's suspension until a proper evaluation of the existing IEP could be made. The district sought the order on the basis of its concern that a substantial likelihood existed that the student would endanger other students if he were returned to school pending the outcome of the evaluation.

A state appeals court temporarily enjoined the student from attending school. Exercising judicial authority to override the "stay-put" provisions of the federal law, the court took special cognizance of the testimony of the high school dean of students, who observed the student and reported the threats he had made against students and a teacher. The district was directed to continue home-bound instruction for the student until the district completed an IEP review.⁹

Failure to Ensure Participation of Children's Teacher Invalidates Placement Decisions

The parents of two Michigan hearing-impaired students challenged a decision of a

hearing officer that the children be provided special education services in their resident school district rather than in a state school for the deaf. The hearing officer's decision was based on a finding that the local district's services for hearing impaired students had been upgraded, and on the requirement that the children receive a free, appropriate education in a less restrictive environment. Although the school district invited a representative of the state school to the multidisciplinary team meeting, that representative could not attend because of other IEP meeting conflicts. At the team meeting, the parents objected to the proposed change in placement on the grounds that no one attending the meeting was sufficiently knowledgeable about the children, both of whom had been resident at the state school for the previous three years.

A federal district court ruled that the IEP meeting did not meet the procedural requirements of the IDEA. Federal regulations require a school district to ensure that each IEP meeting includes the child's teacher. The school district's invitation to a representative of the state school did not fulfill the duty to ensure that the placement decision was made by a group of persons knowledgeable about the child and to ensure that the child's teacher participate in the IEP committee meeting. Failure of the school district to comply with the regulation established that the IEPs were developed using a defective procedure. Since the defects were significant, the court remanded to the district for formulation of new IEPs.¹⁰

Least Restrictive Environment Must First Meet Minimum Educational Requirements

Parents of a child with severe disabilities challenged a local Illinois school district's

decision to continue her placement in a tri-county center for children with disabilities. The child was mentally retarded, speech and language impaired, and possibly autistic. After challenging the district's IEP, the parents undertook a unilateral placement in a residential treatment facility and sought to compel the local district to meet the costs of that placement. An administrative hearing judge ruled for the parents, but the district appealed this decision on the grounds that the judge failed to give sufficient weight to the federal requirement that the child be placed in the least restrictive environment.

The federal appeals court ruled that the mainstreaming requirement was developed in response to school districts that were reluctant to integrate mentally impaired children and nondisabled peers, and not to promote integration with nondisabled peers at the expense of other IDEA requirements. The court found that placement in the least restrictive environment is applicable only if the independent educational program meets IDEA minimums, and concluded that the provision was not appropriate in this case, since the school district was found not to have presented an independent educational program that met the minimum requirements of the IDEA.¹¹

Students Circumvent Disciplinary Expulsions by Asserting Right to Evaluation for Special Education Services

A California high school senior was temporarily suspended for bringing a gun to school, and was advised that expulsion hearings would be initiated. The student, his parent, and their legal counsel objected to the proposed expulsion, and demanded that the student be evaluated to determine whether he was disabled. A diagnostic evaluation was undertaken by the school district,

and no evidence of a disability was noted. The attorney representing the student then appealed the determination and sought to invoke the "stay-put" provision of the IDEA so that the student could remain in school pending the appeal. The school district refused this request, contending that the student and his attorney were seeking to circumvent state education laws and gain the protections of federal special education law to which the student was not entitled.

A federal district court granted that there was a risk that the student was nondisabled and his attorney had invoked the federal law only to delay the expulsion long enough for the student to graduate. However, the court found that the language of the IDEA, coupled with judicial interpretations of the "stay-put provision," makes it clear that the child *shall* remain in the then-current educational placement during the pendency of the appeal. Even though there was no record that the student had ever required special education or failed a course, the requirements of the law were interpreted by the court to extend the procedural safeguard regardless of whether or not the child has been previously diagnosed as having a disability.¹²

In a similar case, a Wisconsin student whose parents removed him from special education classes sought the protection of the IDEA "stay-put" provision when the child was subject to expulsion for violent misconduct. The federal district court concluded that even though the student had been removed from special education classes, he was entitled to an injunction barring expulsion because he was likely to succeed on his claim that he was disabled and entitled to remain in the current educational placement pending a due process hearing under IDEA.¹³

District's Policy on Short-Term Suspension Conforms to Special Education Law

A Washington school district undertook a series of short-term suspensions against a student diagnosed as having a learning disability. The student's behaviors involved aggressive and inappropriate conduct that disrupted classes. The student's parents contended that the short-term suspensions amounted to a change in educational placement and that the district, in undertaking the short-term suspensions, had failed to honor the requirement that the child should remain in the then-current educational placement.

The district's policy guidelines stipulated that there was a 15-day limit on suspensions per semester, but each suspension automatically required a meeting of the multidisciplinary team assigned to the student. At these meetings the team must consider: 1) whether the current problem was part of the student's condition, 2) whether the current problem was the result of an inappropriate program, and 3) whether the cumulative effect of all short-term suspensions had adversely affected the student's program.

The federal appeals court found that the district's policy was lawful and in compliance with the requirements of the IDEA. The court emphasized that not all short-term suspensions are a change in education placement, but noted that the procedures used by the district were sufficient to avoid a series of short-term suspensions that would effectively create a change in placement. Suspensions from school exceeding 10 days can create change in placement, but do not necessarily do so when the school effectively monitors for the possibility of a change in placement.¹⁴

**Interscholastic Age Eligibility Limit
Does Not Violate the Americans with
Disabilities Act**

A high school student in a Missouri school district had been retained in elementary school until it was discovered that he was in need of special education services. After that determination and placement, he had made regular progress through the school system. By the student's senior year, however, he was too old to be eligible to play baseball under the provisions of the high school activities association policy. The age limit for participation was 19, and the student was denied a hardship exception. The student challenged the age limitation as a violation of his rights under the Americans with Disabilities Act.

The federal court of appeals reversed a district court decision and held that the student

had no right to participate in the baseball program. The court found that the age limit requirement is an "essential" eligibility requirement in a high school interscholastic program because it helps reduce the competitive advantage flowing to teams using older athletes, protects younger athletes from harm, and discourages student athletes from delaying their education to gain athletic maturity. The court emphasized that it would not be a "reasonable accommodation" to exempt the student from the age limit, because doing so would constitute a fundamental alteration of the nature of the baseball program. Since the student could not meet the age requirement, he was not "otherwise qualified," or a "qualified individual with a disability" within the meaning of the ADA.¹⁵

Religion

The First Amendment forbids the establishment of religion by the state and guarantees religious liberty. Cases involving the establishment of religion have applied a three-part test to determine whether there is a violation of the Constitution: Is the primary purpose of the state's policy secular? Does the policy or practice have a principal effect that neither advances nor inhibits religion? Does the policy foster excessive entanglement between the state and the religious organization?

A new test has been developed, sometimes referred to as the coercion test. Under this test, which is still evolving as a standard for application to establishment clause issues, a school activity violates the establishment clause when school officials create a coercive pressure to participate in religious activities.

Both the three-part test and the coercion test are linked to the principle that government should remain neutral, neither advancing nor inhibiting religion. In the cases below, courts continue to apply both tests in varying circumstances.

Student-Led Morning Devotionals over School Intercom Violate Establishment Clause

A Mississippi parent filed suit for a preliminary injunction to prevent the local school from continuing the practice of allowing a student club to broadcast morning prayers and devotionals over the school intercom system. Each morning of the school week, after the principal or

another designated school employee completed morning announcements, a student member of the club led a devotional, usually an inspirational reading from the Bible, followed by a prayer. The parent's children were exempted from listening to the broadcasts and were not required to attend class during that time. A teacher would escort the children out of class before the broadcast began.

A federal district court granted the preliminary injunction, finding that the United States Supreme Court's ruling in *School District of Abington Township v. Schempp*¹ made it clear that the practice of broadcasting morning devotionals and school prayers over the school intercom system was unconstitutional.

School officials argued that the practice was protected under students' constitutional free speech rights. The school district argued that it had created a forum for the expression of free speech over the school's intercom system, and that the Equal Access Act prohibited the district from preventing the student club from broadcasting the prayers and devotionals.

While student groups at the secondary level have a right to equal access to school facilities during noninstructional time, there was no suggestion that any student group other than the group using the intercom system to broadcast prayers and devotionals could access this form of communication. The court found the practice to be an endorsement of a particular religion by school officials in light of the captive audience of students in the classrooms. Further, allowing

students to be excused during the programs did not cure the violation of the establishment clause, because excused children would likely feel ostracized and stigmatized by the practice.²

Mississippi Statute Permitting Student Prayers at All Assemblies Is Ruled Unconstitutional

Students, parents, and the American Civil Liberties Union challenged a Mississippi state statute law providing in part that "invocations, benedictions or nonsectarian, nonproselytizing student-initiated voluntary prayer shall be permitted during compulsory or noncompulsory school-related student assemblies, student sporting events, graduation or commencement ceremonies and other school-related student events." This statute law was drafted and became law following a controversy in which a school administrator was suspended and placed on administrative leave for his role in permitting a student group to use the high school intercom for prayers. A federal district court found that the statute was directed to all grades in Mississippi public schools, but noted that the statute did not specify procedures or regulations for implementation of school prayer.

On review by a federal district court, the state statute was ruled unconstitutional. Although the court noted that precedent in the Fifth Circuit would permit nonsectarian, nonproselytizing, student-initiated, voluntary prayers at high school commencement ceremonies, the range of student assemblies at which school prayer could be permissible under the statute was far more extensive. These activities could include compulsory school assemblies, and the court specifically found that to permit such activities at these events would be likely to advance religion since school

officials would appear to be placing the imprimatur of the school on a particular religious creed. Particularly when the student assemblies were of an instructional nature, the appearance of state sponsorship would violate the establishment clause.

The state attorney general defended the statute by arguing that prohibiting voluntary school prayers would constitute viewpoint discrimination in violation of free speech. However, the court rejected this argument by emphasizing that the attorney general had not shown that any of the forums where school prayer was authorized was open to religious groups. The court took the position that to allow prayer would be to exalt prayer over other types of speech that are not permitted at such assemblies, thus favoring religious speech in violation of the constitution.³

Student Religious Club Must Abide by District's Nondiscrimination Policy

A New York school district required that a student Bible Club comply with nondiscrimination law in the election of its officers. The group had been recognized as one of several school clubs that could organize during noninstructional times at the high school. In submitting the Bible Club's constitution, students included a clause requiring that "All members eligible to vote will also be eligible to run for offices. Accepting Jesus Christ as savior is a requirement for all officers." The school board refused to approve the club's constitution, emphasizing that the requirement would violate policies on nondiscrimination. The student club challenged the policy as a violation of its members' closely held religious beliefs.

In the view of the federal district court, the issue in this case was whether the Equal Access

Act requires the school district to exempt a student-initiated club from a nondiscrimination policy applicable to all other student groups. The court concluded that the nondiscrimination policy does not impermissibly inhibit or prevent the club's members from selecting those students they desire to lead the club in prayer or other religious activity. The court reasoned that students who are not satisfied with the selection of officers are free to create another club of their own development. The nondiscrimination policy was not aimed at suppressing free speech or religious liberty, and the application of the policy was the least restrictive means to realize the goal of prohibiting invidious discrimination. The policy did not violate freedom of association rights, and was justified by a compelling state interest in the elimination and prevention of discrimination.⁴

District Can Reprimand Teacher for Teaching Religion in the Classroom

A California biology teacher in a public high school was reprimanded for proselytizing students and teaching religion in the classroom. He sued the school district, alleging that the district violated his rights to freedom of speech and violated the establishment clause of the First Amendment by requiring that he teach evolution in his classroom. The teacher argued that "evolutionism" was a religious belief, and that the school district's requirement established a state-supported religion of "secular humanism."

On review by the Ninth Circuit Court of Appeals, the federal court held that there is no judicial support for the contention that evolution theory or secular humanism are religions in the context of the establishment clause. If these concepts are not a religion, then to require the teacher to teach the theories is not a violation of the

establishment clause. Furthermore, the school district's interest in restricting the teacher's exercise of speech in talking with students about religion during the school day was justified by the school district's interest in avoiding a violation of the establishment clause.⁵

Portrait of Jesus Christ in High School Hallway Violates Establishment Clause

A Michigan high school student objected to a portrait of Jesus Christ that had hung in the hallway of the public school for more than 30 years. The student claimed the portrait violated the establishment clause of the First Amendment. A federal district court granted an injunction to have the portrait removed, and the school district appealed to the federal appeals court. On appeal, the school district contended that the portrait had universal appeal as a work of art and was not just associated with Christianity.

The federal appeals court affirmed the district court decision, finding that the portrait of Christ violated all three parts of the test developed in the 1971 *Lemon v. Kurtzman* decision.⁶ The court recognized that the portrait had a religious purpose and conveyed a message to Christians that the school endorsed that religious viewpoint. Some students would see the display of the portrait as a governmental statement affirming a religious group. Further, the school hallway was not an open forum for the expression of varying points of view; the portrait was owned by the school and was exclusively a promotion of a Christian viewpoint.⁷

School Closures on Good Friday Violate Establishment Clause

In 1941, the state of Illinois made Good Friday a holiday for the public schools of the

state, and the state statute law was repromulgated in 1989. While public schools must accommodate students whose religion requires their absence, Good Friday was the only public school holiday apart from Christmas and Thanksgiving that was of clearly religious origin and character. A public school teacher challenged the holiday, objecting to making Good Friday a paid school holiday, and contending that the state law violated the establishment clause of the First Amendment. From a decision in a federal district court granting summary judgment to the teacher, the state appealed.

The federal appeals court ruled that the state law requiring school closures on Good Friday violated the establishment clause of the First Amendment, since Good Friday was a sectarian holiday that had not accrued a secular justification. Illinois closes schools on 12 holidays. Nine of these are purely secular, while Christmas and Thanksgiving originated as religious holidays but have become secularized. Unless there is a secular justification for the holiday, the state may not make it easier for the adherents of one faith to practice their religion than for the adherents of another faith. Christmas and Thanksgiving have assumed secular purposes in the popular will, and observing them as holidays saves the school system the expense of keeping the schools open on these days, when very few teachers and students could be expected to attend. The state did not produce evidence that Good Friday could support such a secular justification, and therefore the state statute violated the establishment clause.⁸

District Is Not Required to Provide Cued Speech Device to Student in Private Religious School

A Virginia school district refused to provide a special education student with a cued speech transliterator in his private sectarian school. The child was profoundly hearing impaired and had received special education services in the district's public schools until his parents enrolled him in a Christian academy. The parents of the child sued the district, contending that having to pay for their own transliterator constituted a substantial burden on their free exercise of religion, which violated their rights under both the First Amendment and the Religious Freedom Restoration Act.

The federal appeals court found that there was no substantial burden on the parents' free exercise of religion, and affirmed the decision of the district court denying the parents relief. The court invoked the doctrine that no "substantial burden" on free exercise of religion can be established merely because a law or policy operates so as to make the practice of the individual's religious beliefs more expensive. In this case, the parents were neither compelled to engage in conduct proscribed by their religious beliefs, nor had they been forced to abstain from any action that their religion mandated that they take. Having failed to demonstrate anything more than a financial burden related to the exercise of their religious beliefs, the parents could not prevail in their claim that the school district's policy violated free exercise of religion or the provisions of the Religious Freedom Restoration Act.⁹

Tort Liability

Tort liability includes both negligent and intentional conduct that involves a breach of duty causing injury actionable in damages. Negligent liability may include breach of a duty of adequate supervision, of reasonable maintenance of equipment, or of proper instruction. Negligent hiring and failure to adequately supervise employees have become recent focal points for litigation involving administrators.

Defamation is among the forms of intentional tort liability. The defense of qualified privilege, which insulates school officials from liability when their statements are made in good faith, for a proper purpose, and in an appropriate forum, has been relied upon in several contemporary decisions.

Principal's Failure to Disclose Allegations of Previous Assaults Does Not Establish Negligent Supervision

An Alabama high school student sued a school principal for alleged negligent supervision. The student filed a complaint in which she claimed that she had been sexually molested by a tenured teacher. In support of her claim that the principal was negligently liable for the conduct of the teacher, the student claimed that, several years before she was sexually assaulted, the principal had failed to tell the superintendent of the district that two female students had complained that the same teacher had made improper sexual advances towards them. Although the principal had conducted an investigation into the two com-

plaints against the teacher, he did not report the complaints to the superintendent because the results of his investigation were inconclusive.

The Supreme Court of Alabama affirmed a motion for summary judgment in favor of the principal. The court emphasized that an essential element of a claim of negligence is a showing of proximate cause between the alleged breach of a duty of care and an injury to the plaintiff. In this case, the court found that the principal's failure to disclose the previous complaints of sexual misconduct to the superintendent was not shown to be causally related to the student's injury. The court noted that the principal had conducted an investigation of the student complaints, confronted the teacher (who had denied the allegations), and determined that the complaints could not be resolved. In the court's view, it would be purely conjectural whether the principal's disclosure of the students' complaints to the superintendent would have resulted in a termination of the teacher's employment and thus avoided the sexual assault of which the student plaintiff complained.¹

Principal Could Be Liable for Failing to Report Abuse Allegations If No Investigation Was Conducted

In a similar case from Mississippi, the parent of an elementary school child brought an action against a school principal alleging negligence in the principal's failure to report child abuse by a teacher's aide. The parent alleged that

she had reported that her child had been abused by the aide, and the principal's failure to report the allegation to appropriate agency representatives resulted in mental anguish and distress.

The state supreme court ruled that it would not dismiss the parent's complaint without further findings of fact. In particular, the court wanted to know whether the principal had investigated the parent's complaint and had come to a judgment as to whether there was reasonable cause to support the complaint. If the principal failed to investigate, then there could be a basis for an actionable negligence claim.²

Negligent Hiring or Supervision of Abusive Employees Can Result in Liability

Three former students of a New Hampshire school district sued the district and school officials, alleging that they had been sexually abused by three of the district's teachers. Each of the students, all females, alleged that they had been subject to abuse for a period of years, both in and out of school, and that in some cases the abuse had continued after the student had graduated or left the school system. The complaints by the students also alleged that school administrators and other teachers were aware or should have been aware of the abuse. When the suit was filed in a federal district court, that court certified the issue of negligent liability under state law to the state supreme court, which was asked to determine whether the school district and supervisory officials could be negligently liable under state law.

The Supreme Court of New Hampshire ruled that a school district or school administrator has a duty not to hire or retain employees that it knows or should know have a propensity for sexually abusing students. If the former students

in this case could establish that school officials knew or reasonably should have known of such a propensity, the school would generally be liable for the foreseeable sexual abuse of a student by the employee. Furthermore, liability based on negligent hiring need not be limited to abuse that occurred during the school day. A school may be liable for abuse of a student by a school employee outside of school hours where there is a casual connection between the particular injury and the fact of employment. In addition, under the child abuse reporting statutes of the state, the failure of a principal or other supervisor to report child abuse in accordance with the statute could give rise to liability, provided the plaintiffs could show that reporting would have prevented the subsequent abuse.³

Duty of Proper Instruction and Adequate Supervision Applies to School Activities on School Grounds

Parents of a Florida 4th-grade student sued the local district claiming that school employees were negligent in failing to properly instruct and supervise the child in an activity that involved viewing a solar eclipse. The student sustained damage to his eye after trying to look directly at a solar eclipse. The injury was alleged to have occurred while the student was on school grounds, but after the end of the school day. The student joined an extended-day class on the school grounds, and sought to participate in an activity that involved observing the solar eclipse through a pin hole projection onto a sheet of construction paper placed on the ground. The teacher in charge of the activity was instructed to bar students who were not part of the program from participation, and it was disputed whether the teacher had denied the student the opportunity

to participate. At trial, a jury returned a verdict for the school district and against the plaintiff.

A Florida appeals court reversed the jury verdict and returned the case to the trial court for a new trial. The court emphasized that the trial judge's instruction failed to inform the jury of the law applicable to the supervision of students on school grounds. Florida schools have a duty to control and supervise students on school property whether or not they are involved in a school-sponsored activity. The court pointed out that the trial court erred in instructing the jury that the only way the district could be liable for the student's injury was if the teacher gave permission for the boy to participate in the class. While the question of district liability for negligence must still be resolved, the appeals court emphasized that school districts cannot avoid liability for injuries to a student simply by establishing that the student was not granted permission to participate in a supervised activity on school grounds.⁴

School Officials Are Not Liable for Injury Absent Actual Knowledge That a Student Is Carrying a Gun

An Illinois high school student sued the local district for injuries that resulted when a concealed handgun in another student's book bag discharged and the bullet struck her. At the time of the injury, the student was seated at her desk and the student carrying the weapon in the book-bag was seated just ahead of her. The plaintiff's complaint alleged that the district was negligent in that it failed to install metal detectors or to adopt other means of weapons interdiction despite knowledge that guns and other weapons had been brought into some of the district's schools, including the high school in which the incident occurred.

The Illinois appeals court ruled that the school district was immune from liability in this case because it had no special duty to protect the student under the circumstances. The fact that the school district was aware that weapons had been brought into schools did not satisfy a requirement to establish an exception to the immunity doctrine applicable in Illinois. The court emphasized that if school officials had known that a particular student was carrying a concealed weapon, then the unique awareness of a danger to a student or students might have created an exception. In the latter circumstance, a special duty would have been created, obligating school officials to take affirmative steps to eliminate or reduce the danger to students.⁵

Brief, Spontaneous Altercation on School Bus Does Not Create Negligent Liability

The parents of a New York secondary student who was injured in a fight while boarding a school bus sought damages for negligence from the local school board. The student was injured when she was struck in the face by another student, who had been disciplined for fighting on the bus several months earlier. The student had not reported any difficulties with the student who struck her, and the bus driver was not aware of any incidents involving the two students previously.

The state appeals court affirmed a lower court ruling denying any liability for negligence. In its order, the court emphasized that the record established that the fight was a brief, spontaneous occurrence in which the bus driver had no opportunity to intervene. No information in the record established that there was a foreseeable risk of an altercation between these two girls, and the fact that one of the students had been in a

fight four months earlier was insufficient to establish such a foreseeable risk. Furthermore, the court noted that the general rule of law is that liability for injury caused by a fight cannot be predicated upon supervisory negligence if the plaintiff voluntarily entered into the fight.⁶

Principal Is Entitled to Exercise Discretion in Evaluating Seriousness of Student's Alleged Injury

An Alabama principal was sued for alleged negligence in her handling of an incident of assault and battery. The incident involved a female student who was struck in the face by a male student as they exited the school bus on school grounds. The students were questioned about the incident by the principal, who evaluated the seriousness of the student's injuries and concluded that no treatment other than an ice pack was required. The incident was ostensibly resolved when the female student apologized to the male student for uttering an expletive that the male student had thought was a racial epithet, and the male student apologized to the female student for hitting her in the face. However, the parent of the female student brought suit against the principal, despite the fact that there was testimony that the student had sustained no serious or significant injury.

The Supreme Court of Alabama ruled that the principal could not be held liable for the exercise of a discretionary function. The court noted that the principal was compelled to use her own judgment in determining whether the student needed any emergency medical care. Since there were no visible signs of blood and two dentists testified that the injuries were minor and the delay in obtaining medical attention did not worsen the student's medical condition, the court found that

the principal did not abuse her discretion and could not be considered liable of negligence. In the court's view, the principal was making a decision that school personnel must make on a daily basis, using their best judgment and evaluation of the circumstances, and thus the principal was entitled to qualified immunity from liability.⁷

School Security Guard's Failure to Accompany Student to Parked Car Is a Contributing Factor in Shooting Incident

A Louisiana high school student was shot outside the gate of the school parking lot by a nonstudent. Although the facts were disputed, witnesses testified that the student was informed that the car alarm in his automobile had gone off twice during the day. The student observed several youths near his car and approached a school security guard, requesting that she accompany him to his car, which was parked at the curb across the street from the school gate. The guard refused to accompany the student to his car, stating that she was not responsible for the safety of students outside school grounds. When the student went to the car, he was shot several times by one of the youths.

The Louisiana appeals court emphasized that the liability of public school boards for acts of third parties committed against students is minimal. However, the unique circumstances of this case created a basis for liability for the acts of the security guard. The failure to accompany the student to his car, to "furnish him the assistance and security requested," was the basis for a finding that the guard was at least partially responsible for the student's injury. The court reasoned that the guard was aware that someone may have been tampering with the car, since she knew the

alarm had gone off. It followed that although the specific danger that the student would be shot was not foreseeable, it was foreseeable that the guard's presence could have deterred criminal conduct. The court also noted that the school board's decision to hire security personnel and assign them to schools created a duty to protect students against criminal actions of other parties.⁸

Teacher Supervising Class Outing on a Bike Path Is Not Liable for Injury to Third Party

An Illinois school district was sued based on an allegation that a supervising physical education teacher had breached a duty of care in providing instruction and supervision to students engaged in an outing on a state-owned and maintained bicycle path. The injured person was a cyclist who was struck by a student who failed to yield the right-of-way along the path. At the time of the accident, approximately 30 students, all of whom had been on the path several times, were traveling along the path. The instructor was riding in front of the students, who were spread out along the path and traveling at varying speeds. The injured cyclist claimed that the willful and wanton conduct of the teacher in failing to instruct and supervise the students was the proximate cause of her injury.

The state appeals court ruled against the plaintiff, and found that the record of the trial supported a motion for summary judgment in favor of the teacher and the school district. The court noted that the teacher had instructed the students in bicycle safety on previous outings, emphasizing that they should travel in single file along the path. Furthermore, the high school students were of sufficient age and maturity to act on the instructions they had received, and had

already participated in a series of incident-free outings.

The plaintiff contended that the accident could have been avoided if the teacher had been at the back of the group and had insisted that students stay closer together as they traveled along the path. The court, however, found that to say the teacher had a duty to foresee and prevent a bicycle collision under the totality of circumstances in this case would be to impose such a high standard of liability as to make outdoor field trips impossible.⁹

Assumption of Risk Does Not Bar Claim for Coach's Negligent Supervision

An injured Florida high school football player sued the local district for the actions of his coach. The player was a defensive tackle who injured his shoulder and informed the coach of the injury. The coach advised the student to seek medical attention and limited his practice for 10 days. Ten days later the coach placed the player in a round-robin football game and the player further injured the shoulder.

The school district asserted that the student had assumed the risk of contact sport participation that would bar recovery from the injury. A Florida appeals court, however, ruled that an assumption of risk would not bar an action for negligent supervision. The student's express assumption of risk meant that the student could not sue other participants for any injury caused by a risk inherent in the contact sport, but it did not absolve the school district from its duty to provide proper supervision. The student was said to have voluntarily elected to take certain chances when he chose to play football. He waived any right to be free from those bodily contacts

inherent in the game, but that waiver did not include a risk that school personnel would fail to properly supervise him in the activity they sponsored.¹⁰

In a useful comparison case, a New York high school hockey player was barred from establishing that the school district was liable for injuries he sustained in an intramural hockey game. He was said to have voluntarily assumed the risks inherent in participation. The distinction between the two cases is that in the Florida case, the supervising coach had knowledge of the student's injury and still directed him to participate, while in the New York case, there was no evidence the coach had breached any duty of supervision to the student.¹¹

School District Has a Duty to Warn Athletes That They Can Furnish Protective Equipment

An Illinois high school basketball player sued the local district, alleging that his game-related eye injury was based on his coach's failure to provide adequate warning of risks. The student was concerned about the possibility of eye injury, and had borrowed a friend's protective goggles prior to a school practice. When the coach saw the student wearing the goggles, he told the student to take them off because they might present a risk of injury to other players. The student did not wear the goggles again, and sustained an eye injury in a high school game that led to permanent blindness in one eye. A lower court gave a jury instruction that did not specify that a school district has a duty to warn students that they could furnish their own protective equipment to prevent injuries and to allow students to use such equipment. After a verdict for the school district, the parents appealed.

An Illinois appeals court reversed the lower court, emphasizing that the trial court should have instructed the jury that when students engage in school activities the district has a duty to exercise ordinary care to warn students that they should furnish their own equipment to prevent serious injury. Failure to give this instruction seriously prejudiced the plaintiff's case, and a new trial was therefore warranted. Under the circumstances, the coach's directive to remove the glasses could have been interpreted as prohibiting the student from obtaining and wearing protective eyewear. In the court's view, this could result in liability for negligence.¹²

School Officials Are Not Negligent in Determining Student's Class Rank

A North Carolina high school student brought an action against the school district and school officials to recover for negligent infliction of emotional distress she allegedly suffered by not being selected class valedictorian. Students had been informed at the beginning of their senior year that a new method for computing class rank would be implemented in that year. The method used by the school district was properly applied, and the student, who had computed her class rank on the basis of the previous year's method, did not rank first in her class as she had assumed she would.

The state appeals court affirmed a decision of the lower court granting summary judgment to the school district. The court held that the student failed to establish any negligence on the part of school officials with regard to their determination of class rank. The ranking system had been announced in advance of its application, and was regarded by school officials as fair and equitable. Absent any evidence that school officials had been negligent in computing class ranks, the

student could not recover for her alleged injury.¹³

School Districts Normally Have No "Special Duty" to Protect Teachers from Assault on School Grounds

A New York teacher who was assaulted and battered by nonstudents during the school day sued the school district for back injuries she sustained in the assault and battery. The teacher was in her classroom during school hours when three female and one male intruder interrupted her. The intruders accused her of having abused one of her students the previous day. One of the female intruders picked up a chair and hit the teacher with it. The teacher called for help, and the principal and a school security guard arrived and broke up the altercation. At the time of the incident, the school security guard was posted in the lobby of the school building, but there was no practice of questioning persons entering the building. The teacher's classroom, which was located on the second floor, had no communication device that would link her classroom to other parts of the building.

A federal district court granted the school district's motion for summary judgment and ruled against the teacher's claim. Providing security to public school teachers against the criminal acts of third parties on school premises is a governmental function upon which no liability may be imposed absent proof of a special relationship that creates a special duty between the person and the school district. The court found that no special duty to protect the teacher had been created that would serve as a basis for negligent liability. To establish that a special duty to protect and provide for the safety of the teacher in circumstances such as this one, the teacher placed

in evidence a copy of the collective bargaining agreement. Although the agreement stipulated that the school principal would develop a comprehensive safety plan, the court held that there was nothing in the agreement to suggest that a special duty to protect teachers was created by the terms of the agreement. Furthermore, the principal's assertion that his school was "a good school" did not create an affirmative duty to the teacher. Absent a finding that a special duty to protect the teacher from the criminal conduct of third parties had been created, the court found that the school district was immune from liability for the injuries the teacher sustained.¹⁴

In a similar case, a New York special education coordinator sued the school district when he sustained injuries in an assault by a student with emotional disabilities. The student had been sent to the coordinator's office to calm down after fighting with another student. The student's teacher had asked for assistance from the principal, and the principal had stopped by the coordinator's office, but had left without taking any action. Again, the coordinator failed to prove that the school district owed him a special duty that would establish a basis for the recovery of damages for his injury.¹⁵

The Supreme Court of Alabama reached a similar conclusion in a case involving a middle school teacher who was attacked by four students and one nonstudent while on his way to the school cafeteria for lunchroom duty. In this case, the court held that a teacher must prove a special relationship in order to establish that the school district has a special duty to protect him or her from the criminal acts of third parties. The court compared the creation of such a special duty to that of a contractual obligation, requiring that there be evidence of an express or implied agreement, including an offer, acceptance of the offer,

consideration, and mutual assent to the terms of an agreement.¹⁶

Parents May Be Liable to Teacher for Injuries Inflicted by Their Child

A teacher who was injured when a 4th-grade special education student attacked her and pulled her hair sued the parents of the student for their negligence. The student was diagnosed as suffering from attention deficit hyperactivity disorder, and had received a prescription drug that reduced his impulsive and disruptive behavior. Although the drug appeared to be effective, the parents discontinued the medication and failed to follow up with the treating physician. The parents also failed to advise the school that they had elected not to continue the student's medication. The student became increasingly disruptive, and on several occasions had to be forcibly removed from his regular classroom and placed in a time-out room or in a special education classroom. On the occasion in which the teacher was injured, the student was being removed from the regular classroom to a time-out room when he pulled the teacher's hair and she lost her balance on a staircase, fell to the floor, and sustained a serious back injury.

The Supreme Court of Wisconsin affirmed a lower court verdict for the teacher and against the parents. The court reasoned that a parent is under a duty to exercise reasonable care to control his or her child from harming another person if the parent knows or has reason to know that he has the ability to control his child, and knows or should know of the necessity and opportunity for exercising such control. While the decision to take their child off medication did not constitute negligence, the court found that the parents discontinued the child's medication without inform-

ing themselves of other forms of treatment and failed to notify school authorities that the student's behavioral problems were likely to recur as a result of having discontinued the medication. Had they notified school officials, the school district could have developed a plan to better manage the student's behavior. Failure to notify was a contributing factor in the teacher's injury, and a jury could reasonably find that the parents were negligent and liable for the teacher's injury.¹⁷

In a similar case with a different outcome, a New York teacher was injured while breaking up a fight between high school students. His suit against the parent failed because there was no evidence that the child had engaged in violent behavior previously. The parents of the child had never been advised that the student had been engaged in any violent misconduct. The student had been involved in only one previous altercation in which another student struck her and she had defended herself. The court affirmed the parent's motion for summary judgment, holding that the parent cannot be liable for the torts of the child merely because a parental relationship exists.¹⁸

Qualified Privilege Protects School Officials in Statements About Teacher

A Minnesota high school teacher sued the local district for defamation and intentional infliction of emotional distress, claiming that the reports of an investigation and an official memorandum sent to parents had injured her reputation and caused her serious emotional trauma. The case arose as a result of an investigation into complaints that the teacher had discussed racially sensitive issues in her English class, commenting on the physical characteristics and relative intel-

ligence of Asian Americans, African Americans, and Caucasians. An investigation resulted in a finding that the teacher had presented "culturally insensitive" material in her classroom that perpetuated negative racial stereotypes and violated district professional standards. The teacher was suspended for 10 days. Prior to her return to work, the principal sent a letter home to parents indicating that the teacher had been absent following a report that she had made "inappropriate comments" in class that were found to have "perpetuated negative racial stereotypes" and that the teacher "expressed regret" over the incident. The media reported these communications.

The state appeals court found that the school district was not liable for the statements. The court based its rationale on a qualified privilege to make the statements.

A defamatory statement is protected by a qualified privilege if the communication was made upon a proper occasion, with proper motive, and on reasonable grounds, unless malice is shown. In this case, the statements by school officials were based on an investigation of complaints; although there was evidence that some students did not find the statements inappropriate, the complaints were not found to be unsupported. The teacher was held to be a public official for purposes of determining whether a proof of actual malice was required to overcome the qualified privilege. This determination meant that the teacher must show that the statements made by the principal and the investigator were made with knowledge that they were false statements. In the court's view, there was no evidence that the school official who investigated the complaints knew her conclusions to be false, nor was there evidence that the principal made his statements in reckless disregard for the truth and accuracy of the statements.¹⁹

Central Office Administrator Has Qualified Privilege to Communicate Information to Superintendent

A former North Carolina assistant superintendent sued a local school district for slander. The allegations arose from an oral report by the board's communications officer to the superintendent that the assistant superintendent had directed custodial workers to rummage through the superintendent's trash and to break into his office to discover anything that might put him in a bad light. This information was reported to a member of the press, who then contacted the communications officer. In response to the reporter's questions, the communications officer said only that "you would be surprised about what goes on around here." When the assistant superintendent's contract was not renewed in the course of a reorganization, she brought action against the board.

A state appeals court held that the statements by the school board's communications officer to the superintendent were protected by a qualified privilege. The communications director had an obligation to report to the superintendent anything that might adversely affect the school system, and the statements were made in a private meeting with the superintendent. However, the statements made to the press by the communications officer were not protected by a qualified privilege. The court evaluated the comments to the press to determine whether they constituted slander, and held that the statements were not defamatory.²⁰

District Is Not Liable for Breach of Termination Agreement with Former Employee

A Vermont teacher who applied for a teaching position brought an action against the school district and principal of the school where she was previously employed. The teacher, who had been active as a union representative in the former district, had agreed to resign from her teaching position and had entered into an agreement stipulating that any derogatory material or record of grievances would be removed from her file and that all reference inquiries would be referred to the superintendent, who had negotiated a letter of reference with the teacher. When the teacher sought to return to teaching, the district to which she applied contacted the principal of the school where she had been previously employed. This principal had since left the employ of the district and was employed as a principal in another district. The principal said that the former teacher had polarized the staff and caused negative relations between the staff and the school board. As a result of the reference, the school district did not hire the teacher although she applied for more than one position in the district schools over a two-year period.

The Supreme Court of Vermont ruled against the teacher on her claims that the former school district breached a duty under the terms of the contract and should be held liable for her failure to be hired. The court held that the school district did not breach a duty of care in failing to ensure that the principal understood his obligation under the termination agreement. Furthermore, the teacher failed to show that the principal acted as the agent of the school district in giving a negative reference about the teacher. Since the principal had left the employ of the district, the

district had no control over his statements and was not liable for them.²¹

Principal and Parents Have Statutory Immunity for Reporting Suspected Child Abuse by a Teacher

Parents of a 12-year-old Wisconsin student were informed by their daughter that her teacher had sexual contact with her in the classroom. The parents informed the school administrator of this allegation. The administrator undertook an investigation at the school site, interviewed several other students in an effort to substantiate the allegations, and ultimately reported the allegations to the state social services agency. The results of the agency investigation led to the revocation of the teacher's certificate by a state board.

The teacher sued the parents and the school administrator, alleging that they negligently, recklessly, and intentionally made false allegations against him and that the school administrator negligently failed to confirm the parents' accusations before reporting the allegations to the county social services agency.

The Wisconsin appeals court affirmed a motion for summary judgment in favor of the parents and the school administrator, finding that the parents' decision to report the child's allegation to the administrator rather than the social services agency did not preclude statutory immunity from liability and the administrator's actions in conducting an investigation before reporting to the social services agency was reasonable. In the court's view, the parents reported the information to the school administrator with an expectation that the information would be investigated and, if verified, reported to proper authorities. The school administrator's action in expending a reasonable amount of time to verify the child's

allegation and determine the reasonableness of her belief that the teacher had engaged in sexual misconduct was proper, and did not deprive the administrator of immunity for reporting provided under the statute requiring "immediate" reporting of allegations of abuse.²²

Principal Wins \$250,000 Damage Suit Against Parents

An assistant principal in a West Virginia high school sued the parents of a special education student for defamation based on what he contended was a campaign they instigated to have him dismissed. The principal had been responsible for disciplining the parents' son, who was a special education student at the principal's school. The child's father was a school bus driver, and he and the assistant principal had developed a contentious relationship as a result of

disagreements about the way he had handled his job. The parents sent letters seeking the ouster of the assistant principal to the school board, private individuals, and the media. The letters accused the assistant principal, among other things, of violating civil rights laws and of being emotionally immature, unethical, and cruel to students. The trial court awarded the assistant principal \$250,000 in damages, and the parents appealed.

The appeals court affirmed the judgment on solely procedural grounds, finding that the jury properly considered the question of whether the principal was a public or private figure for purposes of a defamation action and ruling that the award of damages in the case was not excessive. While no substantive issues were addressed, the case has precedential value in establishing that parents can be held liable for their defamatory attacks on school employees.²³

Reference Notes

Reference notes for cases or judicial decisions generally list the following: the parties' names, the volume number, the abbreviated title of the official case reporter series cited (e.g. "A.2d." refers to *Atlantic Reporter*, second series), the page number on which the court's opinion begins, the court that rendered the decision, and the year of the decision. For example:

Willis v. School Dist. of Kansas City, 606 S.W.2d 189 (Mo. App. 1980).

West Publishing Company's *National Reporter System*, the standard primary source for American case law and judicial decisions at the state level, groups each of the states and the District of Columbia into seven regional series:

- | | |
|-------------------------|---|
| 1. Atlantic (A.): | Conn., Del., D.C., Me., Md., N.H.,
N.J., Pa., R.I., Vt. |
| 2. Northeastern (N.E.): | Ill., Ind., Mass., N.Y., Ohio |
| 3. Northwestern (N.W.): | Iowa, Mich., Minn., Neb., N.D.,
S.D., Wis. |
| 4. Southern (So.): | Ala., Fla., La., Miss. |
| 5. Southeastern (S.E.): | Ga., N.C., S.C., Va., W.Va. |
| 6. Southwestern (S.W.): | Ark., Ky., Mo., Tenn., Tex. |
| 7. Pacific (P.): | Alas., Ariz., Cal., Colo., Hawaii,
Idaho, Kan., Mont., Nev., N.M.,
Okla., Ore., Utah, Wash., Wyo. |

At the federal level, the *National Reporter System* includes two case reporters:

- | | |
|--|-----------------------|
| 1. <i>Federal Reporter</i>
(F. or F.2d) | U.S. Court of Appeals |
| 2. <i>Federal Supplement</i>
(F. Supp.) | U.S. District Courts |

Decisions rendered by the United States Supreme Court are reported in the *United States Reports* (U.S.).

School Boards and Board Members (pages 2-8)

1. *Missouri v. Jenkins*, 115 S.Ct. 2038 (1995).
2. *Stell v. Board of Public Educ. for City of Savannah*, 860 F.Supp. 1563 (S.D.Ga. 1994).
3. *Pennsylvania Human Relations Com'n v. Philadelphia Public Schools*, 651 A.2d 186 (Pa.Cmwlth. 1994).
4. *Maynard v. Greater Hoyt School Dist.*, 876 F.Supp. 1104 (D.S.D. 1995).
5. *Dawson v. Eastside Union High School Dist.*, 34 Cal.Rptr. 108 (Cal. App. 1994).
6. *Pittman v. Chicago Bd. of Educ.*, 860 F.Supp. 495 (N.D.Ill. 1994).
7. *Villanueva v. Carere*, 873 F.Supp. 434 (D.Colo.1994).
8. *Board of Educ. of Boone County v. Bushee*, 889 S.W.2d 809 (Ky. 1994).
9. *Curtis v. School Committee of Falmouth*, 652 N.E.2d 580 (Mass. 1995).
10. *Delcarpio v. St. Tammany Parish School Bd.*, 865 F.Supp. 350 (E.D.La. 1994).
11. *Silano v. Sag Harbor Union Free School Dist.*, 42 F.3d 719 (2nd Cir. 1994).

Administrators (pages 9-14)

1. *Gibson v. City of Cranston*, 37 F.3d 731 (1st Cir. 1994).
2. *Yarbrough v. Camphor*, 645 So.2d 867 (Miss. 1994).
3. *Tenbroeck v. Castor*, 640 So.2d 164 (Fla. App. 1994).
4. *Harris v. Canton Public School Bd.*, 655 So.2d 898 (Miss. 1995).
5. *Cole v. Ruidoso Municipal Schools*, 43 F.3d 1375 (10th Cir. 1994).
6. *Fairbairn v. Board of Educ. of South Country Central*, 876 F.Supp. 432 (E.D.N.Y. 1995).
7. *Noland v. Lorain Bd. of Educ.*, 869 F.Supp. 529 (N.D. Ohio 1994).
8. *Howard v. Board of Educ. of Sycamore Community Unit School Dist.*, 893 F.Supp. 808 (N.D.Ill. 1995).
9. *Ex Parte Alabama State Tenure Com'n*, 657 So.2d 112 (Ala. 1994).

Finance (pages 15-19)

1. *Roosevelt Elementary School Dist. v. Bishop*, 877 P.2d 806 (Ariz.1994).
2. *Edgewood Independent School Dist. v. Meno*, 893 S.W.2d 450 (Tex. 1995).
3. *State v. Bailer*, 453 S.E.2d 386 (W.Va. 1994).
4. *School Administrative Dist. No. 1 v. Commissioner of Educ.*, 659 A.2d 854 (Me. 1995).
5. *City of Pawtucket v. Sundlun*, 662 A.2d 40 (R.I. 1995).
6. *Miller v. Benson*, 878 F.Supp. 1209 (E.D. Wis. 1995).
7. *Wise v. Ohio Dept. of Educ.*, 863 F.Supp. 570 (N.D.Ohio 1994).

Teachers and Other District Employees (pages 20-32)

1. *Hall v. Marion School Dist. No. 2*, 31 F.3d 183 (4th Cir. 1994).
2. *Cliff v. Board of School Com'rs of City of Indianapolis*, 42 F.3d 403 (7th Cir. 1994).
3. *Gonzales v. Galveston Independent School Dist.*, 865 F.Supp. 1241 (S.D.Tex. 1994).
4. *Rojicek v. Community Consol. School Dist.*, 888 F.Supp. 878 (N.D.Ill. 1995).
5. *Wytrwal v. Mowles*, 886 F.Supp. 128 (D.Me. 1995).
6. *Cirelli v. Town of Johnston School Dist.*, 888 F.Supp. 13 (D.R.I.1995).
7. *Board of Trustees of Hamilton v. Landry*, 638 N.E.2d 1261 (Ind.App. 1994).

8. *Thomas v. Board of Educ. of Newark City School Dist.*, 643 N.E.2d 131 (Ohio 1994).
9. *Iverson v. Wall Bd. of Educ.*, 522 N.W.2d 188 (S.D. 1994).
10. *Muggivan v. Jefferson Parish School Bd.*, 639 So.2d 849 (La.App. 1994).
11. *Nosik v. Singe*, 40 F.3d 592 (2nd Cir. 1994).
12. *Thomas v. Mahan*, 886 S.W.2d 199 (Mo. App. E.D. 1994).
13. *Sheldon Community School Dist. v. Lundblad*, 528 N.W.2d 593 (Iowa 1995).
14. *Palmer v. Portland School Committee*, 652 A.2d 86 (Me. 1995).
15. *Parham v. Raleigh County Bd. of Educ.*, 453 S.E.2d 374 (W.Va. 1994).
16. *Governing Bd. v. Haar*, 33 Cal.Rptr.2d 744 (Cal.App. 1994).
17. *Toney v. Fairbanks North Star Borough School Dist.*, 881 P.2d 1112 (Alaska, 1994).
18. *Boner v. Eminence R-I School Dist.*, 55 F.3d 1339 (8th Cir. 1995).
19. *Gill v. Reorganized School Dist. R-6*, 32 F.3d 376 (8th Cir. 1994).
20. *Evans v. School Dist. of Kansas City*, 861 F.Supp. 851 (W.D.Mo. 1994).
21. *Redman v. Lima City School Dist.*, 889 F.Supp. 288 (N.D.Ohio 1995).

Pupils (pages 33-49)

1. *United States v. Lopez*, 115 S.Ct. 1624 (1995).
2. 113 S.Ct. 2141 (1993).
3. *Good News/Good Sports Club v. School Dist.*, 28 F.3d 1501 (8th Cir. 1994).
4. *Borger v. Bisciglia*, 888 F.Supp. 97 (E.D.Wis. 1995).
5. *Settle v. Dickson County School Bd.*, 53 F.3d 152 (6th Cir. 1995).
6. *Desilets v. Clearview Regional Bd. of Educ.*, 647 A.2d 150 (N.J. 1994).
7. *Johnson-Loehner v. O'Brien*, 859 F.Supp. 575 (M.D.Fla. 1994).
8. 112 S.Ct. 2538 (1992).
9. *Pyle by and Through Pyle v. South Hadley School Comm.*, 861 F.Supp. 157 (D.Mass. 1994). *See also Lopez v. Tulare Joint Union High School Dist.*, 40 Cal.Rptr.2d 762 (Cal.App. 1994). A state appeals court ruled that school officials have state statutory authority to direct that a film arts instructor require his students to delete profanity in student-produced films. The action of school officials, which was based on the grounds of educational suitability, was not considered to be an unconstitutional prior restraint of free speech.
10. *Vernonia School Dist. v. Acton*, 115 S.Ct. 2386 (1995).
11. *In Interest of F.B.*, 658 A.2d 1382 (Pa.Super. 1995).
12. *Picarella v. Terrizzi*, 893 F.Supp. 1292 (M.D.Pa. 1995).
13. *Boldthen v. Independent School Dist.*, 865 F.Supp. 1330 (D.Minn. 1994).
14. *Tenenbaum v. Williams*, 862 F. Supp. 962 (E.D.N.Y. 1994).
15. *Doe v. Bagan*, 41 F.3d 571 (10th Cir. 1994).
16. *In Interest of Doe*, 887 P.2d 645 (Hawaii 1994).
17. *People v. Dilworth*, 640 N.E.2d 1009 (Ill.App. 1994).
18. *State v. Drake*, 662 A.2d 265 (N.H.1995).
19. *In re Joseph G.*, 38 Cal.Rptr.2d 902 (Cal.App. 1995).
20. *Singleton v. Board of Education of USD 500*, 894 F.Supp. 386 (D.Kan. 1995).
21. *Hassan v. Lubbock Indep. School Dist.*, 55 F.3d 1075 (5th Cir. 1995).
22. *Wallace by Wallace v. Batavia School Dist.*, 870 F.Supp. 222 (N.D.Ill. 1994).
23. *Hines v. Caston School Corp.*, 651 N.E.2d 330 (Ind.App. 1995).
24. *Barber v. Colorado Independent School Dist.*, 901 S.W.2d 447 (Tex. 1995).
25. *Wright v. Lovin*, 32 F.3d 538 (8th Cir. 1994).

26. *Baker v. Clay County Bd. of Educ.*, 871 F.Supp. 930 (E.D.Ky. 1994).
27. *Johnson v. Dallas Independent School Dist.*, 38 F.3d 198 (5th Cir. 1994).
28. *Doe v. Rains Independent School Dist.*, 865 F.Supp. 375 (E.D.Tex. 1994).
29. *Hagan v. Houston Independent School Dist.*, 51 F.3d 48 (5th Cir. 1995).
30. *Doe v. Methacton School Dist.*, 880 F. Supp. 380 (E.D.Pa. 1995).
31. *Oona R.S. by Kate S. v. Santa Rosa City Schools*, 890 F.Supp. 1452 (N.D. Cal. 1995).
32. *Seamons v. Snow*, 864 F.Supp. 1111 (D.Utah 1994).
33. *Young v. Austin Independent School Dist.*, 885 F.Supp. 972 (W.D.Tex. 1993).

Special Education (pages 50-57)

1. *Peterson v. Hastings Public Schools*, 31 F.3d 705 (8th Cir. 1994).
2. *Salley v. St. Tammany Parish School Bd.*, 57 F.3d 458 (5th Cir. 1995).
3. *Callahan v. Lancaster-Lebanon Intermediate Unit 13*, 880 F.Supp. 320 (E.D.Pa. 1994).
4. *Reusch v. Fountain*, 872 F.Supp. 1421 (D.Md. 1994).
5. *Murray v. Montrose County School Dist.*, 51 F.3d 921 (10th Cir. 1995).
6. *Urban v. Jefferson County School Dist.*, 870 F.Supp. 1558 (D.Colo. 1994).
7. *Clyde K. v. Puyallup School Dist.*, 35 F.3d 1396 (9th Cir. 1994).
8. *Light v. Parkway C-2 School Dist.*, 41 F.3d 1223 (8th Cir. 1994).
9. *East Islip School Dist. v. Andersen*, 615 N.Y.S.2d 852 (Sup.Ct. 1994).
10. *Brimmer v. Traverse City Area Public Schools*, 872 F.Supp. 447 (W.D.Mich. 1994).
11. *Board of Educ. of Murphysboro v. Illinois Bd. of Educ.*, 41 F.3d 1162 (7th Cir. 1994).
12. *M.P. By M.P. v. Governing Bd. of Grossmont Union*, 858 F.Supp. 1044 (S.D.Cal. 1994). See also *Rodiriecus L. v. Waukegan School Dist.*, 889 F.Supp. 1045 (N.D. Ill. 1995).
13. *Steldt v. School Bd. of Riverdale*, 885 F.Supp. 1192 (W.D. Wis. 1995).
14. *Parents of Student W. v. Puyallup School Dist. 3*, 31 F.2d 1489 (9th Cir. 1994).
15. *Pottgen v. Missouri State High School Activities Ass'n*, 40 F.3d 926 (8th Cir. 1994).

Religion (pages 58-61)

1. 374 U.S. 203, 83 S.Ct. 1560 (1963).
2. *Herdahl v. Pontotoc County School Dist.*, 887 F.Supp. 902 (N.D.Miss. 1995).
3. *Ingebretsen v. Jackson Public School Dist.*, 864 F.Supp. 1473 (S.D.Miss. 1994).
4. *Hsu v. Roslyn Union Free School Dist.*, 876 F.Supp. 445 (E.D.N.Y. 1995).
5. *Peloza v. Capistrano Unified School Dist.*, 37 F.3d 517 (9th Cir. 1994).
6. 403 U.S. 602 (1971).
7. *Washegesic v. Bloomington Public Schools*, 33F.3d 679 (6th Cir. 1994).
8. *Metzl v. Leininger*, 57 F.3d 618 (7th Cir. 1995).
9. *Goodall by Goodall v. Stafford County School Bd.*, 60 F.3d 168 (4th Cir. 1995).

Tort Liability (pages 62-72)

1. *D.A.C. v. Thrasher*, 655 So.2d 959 (Ala. 1995).
2. *T.M. v. Noblitt*, 650 So.2d 1340 (Miss. 1995).
3. *Marquay v. Eno*, 662 A.2d 272 (N.H.1995).
4. *Versprill v. School Bd. of Orange County*, 641 So.2d 883 (Fla.App. 1994).
5. *Thames v. Board of Educ. of Chicago*, 645 N.E.2d 445 (Ill.App. 1994).

6. *DeMunda v. Niagara Wheatfield Bd. of Educ.*, 625 N.Y.S.2d 764 (App.Div.1995).
7. *Byrd v. Sullivan*, 657 So.2d 830 (Ala. 1995).
8. *Peterson v. Jane Doe*, 647 So.2d 1288 (La.App. 1994).
9. *Castaneda v. Community Unit School Dist.*, 644 N.E.2d 61 (Ill.App. 1994).
10. *Zalkin v. American Learning Systems*, 639 So.2d 1020 (Fla.App.1994).
11. *Greenberg v. North Shore Cent. School*, 619 N.Y.S.2d 151 (App.Div. 1994).
12. *Palmer v. Mt. Vernon Township High School*, 647 N.E.2d 1043 (Ill.App. 1995).
13. *Townsend v. Board of Educ of Robeson County*, 454 S.E.2d 817 (N.C.App. 1995).
14. *Genao v. Board of Educ. of City of New York*, 888 F.Supp. 501 (S.D.N.Y. 1995).
See also *Krakower v. City of New York*, 629 N.Y.S.2d 435 (App.Div. 1995) in which a teacher injured in an altercation outside his classroom could not establish that he was owed a special duty that would permit him to claim damages for his injuries.
15. *Verra v. City of New York*, 629 N.Y.S.2d 84 (App.Div. 1995).
16. *Steiger v. Huntsville City Bd. of Educ.*, 653 So.2d 975 (Ala. 1995).
17. *Nieuwendorp v. American Family Insurance*, 529 N.W.2d 594 (Wis.1995).
18. *Armour v. England*, 619 N.Y.S.2d 807 (App.Div.1994).
19. *Elstrom v. Independent School Dist. No 270*, 553 N.W.2d 51 (Minn.App. 1995).
20. *Phillips v. Forsyth County Bd. of Educ.*, 450 S.E.2d 753 (N.C.App. 1994).
21. *Breslauer v. Fayston School Dist.*, 659 A.2d 1129 (Vt. 1995).
22. *Phillips v. Behnke*, 531 N.W.2d 619 (Wis.App. 1995).
23. *Estep v. Brewer*, 453 S.E.2d 345 (W.Va. 1994).

Glossary of Selected Legal Terms

<i>ad valorem</i>	According to the value; taxation based on evaluation, usually of real property.
<i>affirmed</i>	Decision of a lower court upheld by a superior court.
<i>appeal</i>	Resort by one of the parties to a litigation to a superior or appellate court for review of the decision of an inferior court.
<i>content-neutral</i>	Unrelated to content; restrictions or limitations on speech that address the time, place, or manner of speech, but do not limit a particular point of view or opinion.
<i>D.</i>	District Court, e.g., "D. Del." (U.S. District Court of the Delaware District).
<i>defamation</i>	Holding a person up to scorn, ridicule, or public contempt that tends to injure the person's reputation; may be criminal or civil and includes slander (spoken) and libel (written).
<i>due process</i>	Procedural rights to a notice of and a hearing on disputed issues of law or fact.
<i>enjoin</i>	To prohibit an act or acts, by order of a court.
<i>injunction</i>	A prohibitive writ that forbids a party from carrying out, or continuing to carry out, an act injurious to the complainant.
<i>liberty interest</i>	The constitutional right to act without restraint or control, particularly as reflected in the individual's right to seek employment or avoid injury to reputation.
<i>preliminary injunction</i>	Injunction granted at the beginning of a suit pending the result of the trial.
<i>prima facie</i>	On first sight; on its face; sufficient to establish a given fact if uncontradicted.
<i>prior restraint</i>	A limitation on the exercise of speech or press freedom that requires review and approval of the content of speech before it can be disseminated.
<i>proximate</i>	An act or omission of an act which, in a natural and continuous chain of events, causes or plays a substantial role in causing an injury or damage that would not otherwise have occurred.
<i>remand</i>	To send back to a lower court for the purpose of having some further action taken by the lower court.

<i>reporter</i>	A periodic compilation of cases.
<i>restraining order</i>	Order in the nature of an injunction but, unlike an injunction, it is intended only as a restraint until the propriety of granting an injunction can be decided.
<i>slander</i>	Spoken defamation.
<i>summary judgment</i>	Short, concise decision without a jury. Motions for a summary judgment are taken on the ground that there is not genuine issue of material fact; the party in whose favor a summary judgment is issued prevails as a matter of law. This type of motion may be directed to all or only part of a case.
<i>Supreme Court term</i>	The Court's term begins in October and runs to the following June or the completion of the case of that term; the yearly designation for the term derives from the year in which the term opens, e.g., the 1994 term began in October 1994.
<i>threshold question</i>	The initial issue that must be resolved before the court can move to a consideration of other legal issues.
<i>torts</i>	Private or civil wrong or injury. Remedy in this type of action has three elements: existence of a legal duty from defendant to plaintiff; breach of that duty; and damage as a result of that breach.
<i>unitary status</i>	An order of a federal court, finding that a previously segregated school district has eliminated segregated status.
<i>U.S.C.</i>	United States Code, the federal compilation of statute laws.